

Tuesday  
August 25, 1987



# Federal Register

**Briefings on How To Use the Federal Register—**  
For information on briefings in Washington, DC, see  
announcement on the inside cover of this issue.



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## THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** September 29, at 9 a.m.
- WHERE:** Office of the Federal Register,  
First Floor Conference Room,  
1100 L Street NW., Washington, DC.
- RESERVATIONS:** Janice Booker, 202-523-5239

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Title 3—

Proclamation 5695 of August 21, 1987

The President

National P.O.W./M.I.A. Recognition Day, 1987

By the President of the United States of America

## A Proclamation

Perhaps no American could cherish our country's liberty more dearly than those who have defended it and in doing so have paid the price of capture and imprisonment. We take solemn inspiration and resolve from the sacrifices of brave Americans who have endured captivity for their allegiance to our beloved land and our ideals. Their dignity, faith, and valor remind us of the allegiance we owe our Nation and its defenders.

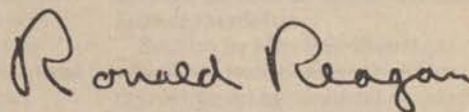
We also take inspiration from the courage of the families of those who remain missing or unaccounted for. The fortitude they display in the face of uncertainty is heroic, like the acts of those whose fates they seek to learn. We as a Nation will not rest in our efforts to secure the release of any U.S. personnel who may still be held against their will, to obtain the fullest possible accounting of those still missing, to repatriate all recoverable American remains, and to relieve the suffering of the families.

The P.O.W./M.I.A. issue will continue to be a matter of the highest national priority until it is resolved. To symbolize our national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans Administration, and the Vietnam Veterans Memorial on September 18, 1987. It will also fly over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

To recognize the special debt of gratitude all Americans owe to those who sacrificed their freedom in the service of our country and to reaffirm our commitment to their courageous families, the Congress, by Senate Joint Resolution 49, has designated September 18, 1987, as "National POW/MIA Recognition Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, September 18, 1987, as National P.O.W./M.I.A. Recognition Day. I call upon all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have made extraordinary sacrifices on behalf of our country. I also call upon State and local officials and private organizations to observe this day with every appropriate ceremony and activity.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.



Presidential Documents

The President

National P.O.W./M.I.A. Recognition Day, 1987

By the President of the United States of America

A Proclamation

For more than a century, our country's leaders have fought to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved.

It is the duty of every citizen to support our nation's leaders and to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved.

The P.O.W./M.I.A. issue will continue to be a part of the lives of our citizens. We have fought to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved.

To recognize the special duty of our citizens in America, we have fought to ensure that our nation's honor and integrity are preserved. We have fought to ensure that our nation's honor and integrity are preserved.

Now, therefore, I, Ronald Reagan, President of the United States, do hereby recognize P.O.W./M.I.A. Recognition Day. I call upon all Americans to join in this day of remembrance and to ensure that our nation's honor and integrity are preserved.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the President of the United States at Washington, D.C., this 1st day of September, 1987.

Ronald Reagan

# Rules and Regulations

Federal Register

Vol. 52, No. 164

Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 926 and 944

#### Tokay Grapes Grown in San Joaquin County, CA, and Imported Tokay Grapes; Handling Requirements for 1988 and Subsequent Seasons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department is adopting with modifications as a final rule the provisions of an interim final rule which established handling requirements in effect for Tokay grapes. This action is intended to ensure that only good quality Tokay grapes will be available for fresh market shipment during each season.

**EFFECTIVE DATE:** September 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250-0200, telephone (202) 475-3914.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act,

and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The production area of Marketing Order No. 926 consists of San Joaquin County which is located in central California. Production for the 1985 season totaled 7,993 tons or approximately 851,000 lugs of Tokay grapes. Fresh shipments of Tokay grapes accounted for 4.87 percent of the total crop. Tokay grapes crushed for wine accounted for 95.13 percent of the total crop. For 1985 bearing acres of all grapes increased from 675,000 acres to 681,957 acres. Table grapes increased from 77,400 acres to 77,725 acres, wine grapes from 317,000 acres to 320,782 acres, and raisin varieties from 280,600 to 283,450 acres. Based upon the most current available information, production for the 1986 season totaled approximately 423,000 lugs of Tokay grapes. Fresh shipments of Tokay grapes accounted for approximately 3 percent of the total crop. Tokay grapes crushed for wine accounted for approximately 97 percent of the total crop.

Approximately 14 handlers of California Tokay grapes under the marketing order for fresh Tokay grapes grown in San Joaquin County, California, will be subject to regulation during the 1988 season. In addition, there are 390 growers of California Tokay grapes. There are no importers of record of Tokay grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$100,000, and agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Tokay grapes may be classified as small entities.

The Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this action on small entities. The regulatory action in this instance is a final rule which will become effective for the 1988 season and continue in effect during subsequent seasons for California and imported Tokay grapes.

Handling regulations implemented in this action are the same as those in

effect for several past seasons. The regulations have resulted in shipments into fresh markets of quality fruit and have served to promote buyer confidence and consumer satisfaction. Based upon available information, it is the agency's view that the impact of this action will be beneficial to the handlers and producers.

The handling requirements applicable to Tokay grapes grown in San Joaquin County, California (California Tokay grapes) are issued under the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of fresh Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674). The California Tokay grape regulation is based upon the recommendations and information submitted by the Industry Committee, established under the order, and upon other available information.

This rule finalizes the rulemaking begun with the publication of an interim final rule in the Federal Register at 51 FR 29448. That rule was effective August 14, 1986, through November 15, 1986, for California Tokay grapes. The interim final rule also provided that for subsequent years, the same requirements would apply for the period August 12, the customary beginning of the shipping season, through November 15 for domestic grapes.

The handling requirements applicable to imported Tokay grapes are issued under section 8e (7 U.S.C. 608e-1) of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The interim final rule provided that for imported Tokay grapes these requirements would be in effect during the 1987 season for the period August 16 through November 15. This final rule changes that period to August 12 through November 15 for 1988 and each season thereafter.

Section 8e also provides that whenever two marketing orders regulating an agricultural commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the

areas produces the commodity in most direct competition with the imported commodity. Currently, under Marketing Order No. 925, desert grapes grown in a designated area of southeastern California which would include Tokay grapes are regulated during the period April 20 through August 15 each season (California Desert Grape Regulation 6, 7 CFR 925.304; 52 FR 8870). This final rule regulates the handling of Tokay grapes grown in San Joaquin County, California, during the period August 12 through November 15 of each season, and this area is the dominant source of Tokay grapes during this period. Thus, it is found that shipments of grapes under Marketing Order No. 926 would be in most direct competition with any imported Tokay grapes during the period August 12 through November 15 each season. This final rule does not affect the regulation of any other imported varieties of table grapes under Table Grape Import Regulation 4. Accordingly, this final rule modified the interim final rule to change the effective period of the Tokay Grape Import Regulation 5 to the period August 12 through November 15 of each year and the Table Grape Import Regulation from April 20 through August 11 for Tokay grapes under M.O. 925.

This final rule also clarifies the intended effect of § 944.605(d) of the interim final rule which is that any failed lot of Tokay grapes either may be exported or reconditioned. The provision was not intended to require that all failed lots be disposed of pursuant to that section.

This action finalizes the interim final rule which was recommended by the Tokay Industry Committee at its July 11, 1986, organizational meeting to issue quality requirements for fresh market shipments of Tokay grapes and imported Tokay grapes. In making its recommendation, the committee considered supply and market conditions and other factors affecting the need for and type of regulations suitable for the 1986 California Tokay grape crop. On the basis of these considerations the committee recommended establishing for California Tokay grapes the minimum grade and size requirements specified in the U.S. No. 1 Table grade of the U.S. Standards for Grades of Table Grapes (European or Vinifera type), except that at least 30 percent, by count, of each bunch shall show characteristic color. This rule also requires that each container of California Tokay grapes bear a Federal-State Inspection Service lot stamp number in plain letters and figures on one outside end. The minimum grade and container marking requirements for

grapes are necessary to prevent the shipment of immature, poor quality, and excessively small fruit in fresh commercial marketing outlets. Shipment of low quality fruit would tend to depress prices of all grapes since low quality fruit undermines consumer confidence in the quality of all fruit sold in the market and discourages repeat purchases. The specified grade requirements are consistent with the quality and size composition of the available crop and are designed to provide ample supplies of good quality fruit consistent with the declared policy of the Act. California Tokay grapes not meeting these requirements may be sold in local markets within San Joaquin County, or in the processing outlet where a major portion of the crop is utilized.

The interim final rule was issued August 13, 1986, and published in the *Federal Register* on August 18, 1986 (51 FR 29448). Interested persons were given until September 17, 1986, to submit comments. No comments were received.

Handling requirements contained in this final rule will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary, upon the recommendation and information submitted by the committee, or upon other information available to the Secretary. Heretofore, regulations issued under Marketing Order 926 were effective for a single marketing season. However, over the past several years the same handling requirements have been imposed each season without revision. It is expected that the quality and handling requirements will continue unchanged from season to season. Therefore, it is unnecessary to issue regulations for only a single season. In addition, this change could result in a reduction in operational costs.

Although the handling regulations will automatically apply each year, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information,

and determine whether modification, suspension, or termination of the regulations on shipments of Tokay grapes would tend to effectuate the declared policy of the Act.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this final rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Parts 926 and 944

Marketing agreements and orders, Grapes, California, Fruits, Import regulations.

For the reasons set forth in the preamble, 7 CFR Parts 926 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 926 and 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

#### PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

2. Section 926.324 is revised to read as follows:

##### § 926.324 California Tokay Grape Regulation 23.

(a) During the period August 12 through November 15 of each year, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade, and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definitions.* "U.S. No. 1 Table grade" and "characteristic color" shall mean the same as in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880-51.912).

**PART 944—FRUITS; IMPORT REGULATIONS**

3. Section 944.605 is revised to read as follows:

**§ 944.605 Tokay Grape Import Regulation 5.**

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 12 through November 15 of each year the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880–51.912), and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, and quality of Tokay grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of Tokay grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not reconditioned or exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) *Minimum quantity exemption.* Any person may import up to 250 pounds of grapes in any one shipment exempt from the requirements of this section.

(f) It is determined that imports of Tokay grapes, during the effective time of this regulation, are in most direct competition with Tokay grapes grown in the San Joaquin County of California, under 7 CFR Part 926, and that the grade, size, and quality requirements specified in this section shall be the same as those established under § 926.324 for California Tokay grapes.

4. Section 944.503 is amended by revising (a)(3) and adding (e) to read as follows:

**§ 944.503 Table Grape Import Regulation 4.**

(a) \* \* \*

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 20 through August 15, 1988, and April 20 through August 15 of each year thereafter, except for the Tokay variety of grapes which shall be subject to the grape import requirements contained in this section for the period April 20 through August 11 of each year.

(e) It is determined that imports of Tokay grapes, during the period April 20 through August 11 of each season are in most direct competition with Tokay grapes grown in a designated area of southeastern California under 7 CFR Part 925, and the grade, size, maturity, and quality requirements specified in this section shall be the same as those established under § 925.304 for California desert grapes.

Dated: August 17, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Service.

[FR Doc. 87-19352 Filed 8-24-87; 8:45 am]

BILLING CODE 3410-02-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 87-ANE-9; Amdt. 39-5688]

**Airworthiness Directives; Avco Lycoming Textron ALF502R Series Turbofan Engines Installed on British Aerospace BAe146 Aircraft**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons and amendment adopting an airworthiness directive (AD) which amends Telegraphic Airworthiness

Directive (TAD) T87-06-52 which was previously made effective as to all known U.S. owners and operators of Avco Lycoming Textron ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft by individual telegrams. The TAD required initial and repetitive inspections of the oil system chip detector(s) and oil filter bypass valve to ensure the integrity of the reduction gear system and overspeed protection system. The TAD was needed to prevent engine power turbine (PT) overspeed and uncontained PT blade failure resulting from reduction gear system decouple and inaccurate PT overspeed signal generation. This AD amends the TAD by adding an alternate requirement which replaces the oil filter bypass valve with an improved oil filter bypass valve and deletes the oil filter bypass valve spring force check requirement for this improved valve.

**DATES:** Effective August 28, 1987, as to all persons except those persons to whom paragraphs (a), (b), (c), (d), (e), and (f)(1) were made immediately effective by TAD T87-06-52, issued March 24, 1987, which contained this amendment.

**Compliance Schedule:** As prescribed in the body of the AD.

**Incorporation by Reference:**

Approved by the Director of the Federal Register as of August 28, 1987.

**ADDRESSES:** The applicable service bulletins (SB's) may be obtained from Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497.

A copy of the SB's is contained in Rules Docket Number 87-ANE-9, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

**SUPPLEMENTARY INFORMATION:** On March 24, 1987, TAD T87-06-52 was issued and made effective immediately as to all known U.S. owners and operators of ALF502R series turbofan engines, installed on British Aerospace BAe146 aircraft. The TAD required initial and repetitive inspections of the oil system chip detector(s) and oil filter bypass valve to ensure the integrity of the reduction gear system and

overspeed protection system. The FAA has determined that engine PT overspeed and uncontained PT blade failure can result from progressive deterioration of lubricated components in conjunction with improper operation of the oil filter bypass valve. The combined effect of these anomalies can cause a reduction gear system failure and induce generation of an inaccurate PT speed signal, thereby inhibiting the overspeed protection system. One uncontained failure of this type has occurred, resulting in substantial aircraft damage. AD action was then necessary to prevent failure of the reduction gear system and PT overspeed signal generation system.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams, issued March 24, 1987, to all known U.S. owners and operators of ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft. These conditions still exist, and this AD with the alternate requirement established below is hereby published in the *Federal Register* as an amendment to § 39.13 of Part 39 in the Federal Aviation Regulations (FAR's) to make it effective as to all persons.

Additional data gathered by the FAA since issuance of TAD T87-06-52 has shown the following:

(a) Inspection results from the oil filter bypass valve spring force check required by TAD T87-06-52 indicated a high rejection rate for the valve. Oil filter bypass valves tested at Avco Lycoming Textron were rejected at a rate of 53 percent (71 out of 134 were rejected).

(b) The oil filter bypass valve spring which regulates the pressure required to open the valve lost its spring rate through increasing cyclic operation.

(c) A redesigned oil filter bypass valve which incorporates a more durable spring to meet the operational requirements of the valve is available.

As a result of the additional data, the FAA has determined that the improved oil filter bypass valve provides an alternate means to ensure the integrity of the reduction gear system and overspeed protection system. Therefore, this AD amends TAD 87-06-52 by adding an alternate requirement which replaces the oil filter bypass valve with an improved oil filter bypass and deletes the oil filter bypass valve spring force check requirement for this improved valve.

## Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

## List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

## PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD).

**Avco Lycoming Textron:** Applies to Avco Lycoming Textron ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the reduction gear system and power turbine (PT) overspeed signal generation system which could result in uncontained PT blade failure and aircraft damage, accomplish the following:

(a) Visually inspect the engine chip detector(s) for metal contamination condition within the next 25 engine hours or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron Service Bulletin (SB) Number ALF 502R-72-0160, Revision 1, dated March 20, 1987, as follows, depending on engine chip detector configuration:

(1) Inspect the full flow chip detector, for engines installed with a full flow chip detector.

(2) Inspect the chip detectors located in the accessory gearbox, Number 2 bearing scavenge line, and Number 4/5 bearing scavenge line, for engines without a full flow chip detector installed.

**Note.**—Chip detector(s) conditions are described in Avco Lycoming Textron SB Number ALF 502R-72-0160, Revision 1, dated March 20, 1987, Figures 1, 2, and 3.

(b) Remove from service, engines inspected per paragraph (a) above, which exhibit chip detector Condition 2 or 3 in accordance with the following:

(1) Engines exhibiting chip detector Condition 3, prior to further flight.

(2) Engines exhibiting chip detector Condition 2, within 25 engine hours or 25 flights in service since last inspection, whichever occurs first.

(c) Visually reinspect engine chip detector(s) which exhibited chip detector Condition 1 or less, at intervals not to exceed 50 engine hours or 50 flights in service since last inspection, whichever occurs first, in accordance with the procedures specified in paragraph (a) above. Remove engines from service which exhibit the following conditions:

(1) Engines which exhibit chip detector Condition 2 or 3, in accordance with paragraph (b) above.

(2) Engines which have exhibited chip detector Condition 1 for 4 consecutive chip detector inspections, within 25 engine hours or 25 flights in service since last inspection, whichever occurs first.

(d) Inspect the engine oil filter bypass valve for leakage within the next 25 engine hours or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron SB Number ALF 502R-79-0162, dated March 23, 1987, or SB Number ALF 502R-79-0162, Revision 1, dated May 26, 1987. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(e) Reinspect the oil filter bypass valve for leakage in accordance with Avco Lycoming Textron SB Number ALF 502R-79-0162, dated March 23, 1987, or SB Number ALF 502R-79-0162, Revision 1, dated May 26, 1987, as follows:

(1) Prior to further flight, whenever inspection of the engine oil chip detector(s) exhibits Condition 2 or 3. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(2) Prior to further flight, whenever oil filter is in impending bypass (filter bypass indicator extended) and chip detector Condition 1 exists. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(f) For oil filter bypass valve P/N 2-303-432-01, at the next shop visit of engine or oil pump assembly, accomplish the following:

(1) Conduct the oil filter bypass valve spring compression force check, in accordance with Avco Lycoming Textron SB

Number ALF 502R-79-0162, dated March 23, 1987. Oil filter bypass valves which do not comply with the spring compression force limits must be removed and replaced with serviceable parts, prior to further flight; or

(2) Remove and replace with oil filter bypass valve P/N 2-303-432-02 in accordance with ALF 502R-79-0162, Revision 1, dated May 26, 1987. Compliance with paragraph (f)(1) above is not required for oil filter bypass valve P/N 2-303-432-02.

**Notes.**—(1) Engines removed from service, in accordance with paragraph (b) or (c) above, may be returned to service following corrective action performed in accordance with the Avco Lycoming Textron engine maintenance manual.

(2) Engine shop visit is defined as the input of an engine to a repair shop where subsequent engine maintenance entails any of the following:

- (i) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".
- (ii) Removal of a disk, hub, or spool.
- (iii) Removal of the fuel nozzles.
- (3) Oil pump assembly shop visit is defined as the input of the subject component to a repair shop where subsequent maintenance entails any of the following:
  - (i) Disassembly, cleaning, flushing of the pump.
  - (ii) Readjustment of oil pump pressure.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Avco Lycoming Textron SB Numbers ALF 502R-72-0160, Revision 1, dated March 20, 1987; ALF 502R-79-0162, dated March 23, 1987; and ALF 502R-79-0162, Revision 1, dated May 26, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies, upon request, from Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England

Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 87-ANE-9, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Paragraphs (a), (b), (c), (d), (e), and (f)(1) become effective August 28, 1987, as to all persons except those persons to whom paragraphs (a), (b), (c), (d), (e), and (f)(1) of this amendment were made immediately effective by TAD T87-06-52, issued March 24, 1987. Paragraph (f)(2) of this amendment becomes effective August 28, 1987, as to all persons.

Issued in Burlington, Massachusetts, on July 17, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-19380 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

[Docket Number 86-ANE-24; Amdt. 39-5689]

**Airworthiness Directives; Rolls-Royce plc (R-R) (formerly Rolls-Royce Limited) Spey 506-14, 506-14A, 506-14D, 511-5W, 511-14, 511-14W, 511-8, 511-8/Mod. 2970, 512-14E, 512-14DW, 512-5, 512-5W, 555-15, 555-15H, 555-15N, and 555-15P Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that would require inspection for cracks, and repair or replacement as necessary, of the primary airscoops in the combustion section on certain R-R Spey turbofan engines. The AD is needed to prevent uncontained engine failure due to hot gas impingement on the combustion case inner wall and subsequent burnthrough.

**DATES:** Effective—September 28, 1987. **Compliance Schedule:** As prescribed in the body of the AD.

**NOTE.**—Incorporation by Reference—Approved by the Director of the Federal Register as of September 28, 1987.

**ADDRESSES:** The applicable service bulletin (SB) may be obtained from the Service Manager, Spey Engine, Rolls-Royce plc, East Kilbride, Glasgow G74, 4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 86-ANE-24, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and

may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chung C. Hsieh, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7091.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring inspection for cracks, and repair or replacement as necessary, of the primary airscoops in the combustion section on certain R-R Spey turbofan engines was published in the *Federal Register* on December 11, 1986 (51 FR 44632). The proposal was prompted by two instances of combustor case burnthrough in service resulting from the primary airscoop failures. The failure of the primary airscoop due to cracks has resulted in burner stem (fuel nozzle) fretting, fuel leakage, and flame penetration of the engine casings and subsequent casing burnthrough. Since this condition is likely to exist or develop on other engines of the same type design, the AD requires inspection for cracks, and repair or replacement as necessary, of the primary airscoops on certain R-R spey engines in accordance with R-R SB Number SP72-997, dated October 1985.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Eighteen responses were received concerning the proposed rule. Following consideration of those comments, it was determined that the compliance requirements of the AD would be changed by modifying the shop visit definition note.

### Discussion of Comments

One commenter requested that the inspection of the primary airscoops should not be required when the combustors are changed in the field in accordance with the R-R SB SP72-1001 even though the airscoops are accessible. The FAA agrees. It is FAA's intention to have the inspection performed in the repair shop. Such adjustment to the proposed compliance requirements would not compromise safe operation of the engine.

All commenters stated that the compliance requirements of the primary airscoop inspection schedule defined by

the shop visit note of the proposed rule was more restrictive than that required in the R-R SB SP72-997. The FAA agrees and has adjusted the definition of shop visit as described below.

Six commenters proposed that the shop visit compliance defined in the R-R SB be used. The FAA disagrees because the wording in the compliance section of the SB is not specific and subject to interpretation.

Twelve commenters requested removal of items (c) and (d) from the shop visit definition note (i.e. removal of the main gearbox and the fuel nozzle). Three of those commenters also requested that item (a) and (b) of the shop visit definition note (i.e. separation of a major engine flange and removal of a disk, hub, or spool) be modified. Four commenters were concerned about the compliance cost which would be higher than the FAA's estimate if the shop visit was as defined in the proposed AD.

The FAA has re-evaluated the engine service experience data and agrees that the compliance requirement of the proposed AD based on the shop visit definition was more restrictive than had been intended. The wording in the AD has been changed to establish a shop visit definition without compromising safe operation of the engine. Shop visit is redefined as the input of an engine to a repair shop where the subsequent engine maintenance entails the separation of front and rear flanges of the outer combustion case assembly. Since this change results in a more relaxed compliance requirement for the AD, no further notice is necessary. The estimated total cost for the AD will remain unchanged based on the revised shop visit definition.

## Conclusion

The FAA has determined that this regulation involves approximately 970 Spey engines (domestic fleet) at an approximate total cost of \$155,000. It has also been determined that less than one-third of the operators affected by this rule are small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR

## FURTHER INFORMATION CONTACT".

### List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [AMENDED]

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Rolls-Royce plc (formerly Rolls-Royce Limited):** Applies to Rolls-Royce (R-R) Spey 506-14, 506-14A, 506-14D, 511-5W, 511-14, 511-14W, 511-8, 511-8/Mod, 2970, 512-14E, 512-14DW, 512-5, 512-5W, 555-15, 555-15H, 555-15N, and 555-15P turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the primary airscoop and subsequent burnthrough of the engine case, inspect for cracks, and repair or replace as necessary, the primary airscoops in accordance with R-R Service Bulletin (SB) Number SP72-997, dated October 1985, at the next engine shop visit after the effective date of this AD.

**Note.**—For the purpose of this AD, engine shop visit is defined as the input of an engine to a repair shop where combustion section system overhaul facilities exist and the subsequent engine maintenance entails the separation of front and rear flanges of the outer combustion case assembly.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

R-R SB Number SP72-997, dated October 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Service Manager, Spey Engine, Rolls-

Royce plc, East Kilbride, Glasgow G74 4PY, Scotland. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-24, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on September 28, 1987.

Issued in Burlington, Massachusetts, on July 17, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-19381 Filed 8-24-87; 8:45 a.m.]

BILLING CODE 4910-13-M

### 14 CFR Part 71

[Airspace Docket No. 87-AGL-16]

### Alteration to the Marion, IL Control Zone

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the published description for the Marion, IL control zone. Due to the addition of a DME capability to an existing VOR facility; and, because the existing VOR facility is identified in the existing description, the published description needs modification.

**EFFECTIVE DATE:** 0901 UTC, November 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:** Docket 87-AGL-10 addressed modifying the published descriptions for Manitowoc, WI; Marion, IL; Marion, IN; and Mattoon, IL by changing the acronyms VOR to VOR/DME, but no specific effective date for charting was mentioned. Distribution of the docket was made to aviation interest groups and Airport Managers who are located in the above mentioned areas.

The purpose of this docket is to supplement information to Docket Number 87-AGL-10 for Marion, IL. The supplemental information includes an effective date and expands on the fact that the only modification being made will be to the legal description and to charting changes showing VOR/DME instead of VOR for the facility. Once an effective date has been determined for

commissioning the VOR/DME facility for Marion, IN docket action will be taken to include supplemental information for this location.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the published description for Marion, IL by changing the acronym VOR to VOR/DME.

There will be no change to the existing designated airspace area or designated altitudes for the associated control zone. The only effects will be a charting change to depict VOR/DME facility in lieu of VOR facility.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

#### PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.171 [Amended]

2. Section 71.171 is amended as follows:

In all instances where the acronym "VOR" appears, remove and replace with "VOR/DME" for the control zone listed below.

#### Marion, IL [Revised]

Issued in Des Plaines, Illinois, on August 12, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-19383 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 87-AGL-11]

#### Alteration to Control Zone, Muncie, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** The nature of this action is to alter the Muncie, IN, control zone by removing Reese Airport, Muncie, IN, from the control zone area and accommodating existing instrument approach procedures to the airport. The intended effect of this action is to eliminate the southeast extension of the control zone to permit traffic pattern operations at Reese Airport to be conducted clear of the control zone area. **EFFECTIVE DATE:** 0901 UTC, November 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

#### SUPPLEMENTARY INFORMATION:

##### History

On Monday, July 6, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Muncie, IN, control zone area (52 FR 25240).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the

Muncie, IN, control zone and removes Reese Airport from the area.

By adding a step down fix to the VOR RWY 32 Standard Instrument Approach Procedure (SIAP) at Delaware County-Johnson Field Airport we can eliminate the southeast extension to the control zone which eliminates Reese Airport from the area. This control zone modification will permit traffic pattern operations at Reese Airport to be conducted outside the control zone. This, in turn, will eliminate requirements for Muncie Air Traffic Control Tower to approve traffic pattern operations when the control zone is IFR with visibility between one (1) and three (3) miles, and will allow operations based on weather requirements of uncontrolled airspace below 700 feet above ground level.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

#### Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

#### PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10354; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.171 [Amended]

2. Section 71.171 is amended as follows:

#### Muncie, IN [Revised]

Within a 5-mile radius of Delaware County-Johnson Field (lat. 40°14'31"N, long. 85°23'47"W); within 3 miles each side of the Muncie VOR/DME 014 radial, extending from the 5-mile radius zone to 8.5 miles north of the VOR/DME; and within 3 miles each side

of the Muncie VOR/DME 321 radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VOR/DME. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on August 14, 1987.

Teddy W. Burcham,  
Manager, Air Traffic Division.

[FR Doc. 87-19364 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 87-ASW-11]

#### Removal of Control Zone; Killeen, TX, Designation of Control Zone; Robert Gray Army Airfield (AAF), TX, Designation of Control Zone; Hood Army Airfield (AAF), TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment will designate a control zone at Robert Gray AAF and designate a part-time control zone at Hood AAF. The intended effect of the amendment is to remove the Killeen, TX, control zone and define that airspace as two distinctly named control zones. The Robert Gray AAF Control Zone will encompass the Robert Gray AAF, Hood AAF, and Killeen Municipal Airports. The Hood AAF Part-time Control Zone, when in effect, will encompass the Hood AAF and Killeen Municipal Airports. This amendment is necessary to provide a more accurate, real-time, official control zone weather reporting service for the Hood AAF and Killeen Municipal Airports. Official control zone weather observations for both Hood AAF and Killeen Municipal Airports will be taken during the hours that the Hood AAF control zone is in effect by United States Air Force (USAF) personnel located at Hood AAF. This action will enhance usage of both Hood AAF and Killeen Municipal Airports. Additionally, the control zone airspace located north of Hood AAF will be established at 3 miles since the primary use of the Hood AAF Airport is by military helicopter traffic.

**EFFECTIVE DATE:** 0901 UTC, November 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

#### SUPPLEMENTARY INFORMATION:

##### History

On April 16, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the control zone at Killeen, TX., designate a control zone at Robert Gray AAF, TX., and designate a part-time control zone at Hood AAF, TX (52 FR 16855).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two letters of objection were received as a result of this invitation. The city of Killeen and Central Texas College responded as follows:

- The source and type of services and weather information to be provided to pilots by Hood AAF are not clear.
- The possibility of creating a confusing situation exists when the Hood Control Zone is closed and the Gray Control Zone assumes the airspace.
- The proximity of the Hood Control Zone to Restricted Areas R-6302B, R-6302D, and a portion of R-6302E may be confusing to pilots operating in the Hood Control Zone.

Air traffic service being provided to pilots using the Killeen Municipal Airport will still originate from Gray Approach Control. There will be no change in the air traffic procedures used, whether the Hood Control Zone is in effect or not. However, the official control zone weather for the Killeen Municipal Airport will now come from Hood AAF, thus enhancing the use of the Killeen Municipal Airport by providing more accurate/real-time weather.

The relationship between the new Hood Control Zone and the restricted areas located north of Hood AAF will be the same as the relationship which now exists between the present control zone and the restricted areas. The proximity of the new Hood Control Zone to these restricted areas will, in fact, be less than the present control zone.

Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

##### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes control zones at the Robert Gray AAF and Hood AAF Airports, and removes the control zone at Killeen, TX. The Hood Control Zone will encompass the Killeen Municipal Airport with no

reduction in airspace. The control zone airspace located north of Hood AAF will be established at 3 miles since the primary use of the airport is by military helicopter traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

#### PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Ex. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

#### § 71.171 [Amended]

2. Section 71.171 is amended as follows:

#### Killeen, TX [Removed]

#### Robert Gray Army Airfield (AAF), TX [New]

Within a 5-mile radius of Robert Gray AAF (Lat. 31°04'04" N., Long. 97°49'45" W.); within 1.5 miles each side of the north localizer course extending from the 5-mile radius area to 7 miles north of the airfield; within 2 miles each of the 160° bearing from the Robert Gray AAF extending from the 5-mile radius area to 11 miles south of the airport; within a 3-mile radius of the Hood AAF (Lat. 31°8'13" N., Long. 97°42'49" W.); within a 5-mile radius of the Killeen Municipal Airport (Lat. 31°05'09" N., Long. 97°41'10" W.), excluding the portion within the Hood AAF, TX Control Zone when it is effective.

#### Hood Army Airfield (AAF), TX [New]

Within a 3-mile radius of the Hood AAF (Lat. 31°08'13" N., Long. 97°42'49" W.) and within a 5-mile radius of the Killeen Municipal Airport (Lat. 31°05'09" N., Long. 97°41'10" W.); excluding the portion subtended by a chord drawn between the

points of intersection of the 3-mile radius of the Hood AAF and the 5-mile radius of the Robert Gray AAF, TX, Control Zones south to the intersection of the 5-mile radius of the Killeen Municipal Airport and the 5-mile radius of the Robert Gray AAF Control Zones. This control zone is effective 2300, local time, Sunday to 0700, local time, Saturday and other times by notice to airmen.

Issued in Fort Worth, TX, on August 4, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-19382 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 87-AGL-9]

##### Alteration to the Hamilton, OH Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the Hamilton, OH, transition area to accommodate a new NDB-A Standard Instrument Approach Procedure (SIAP) to Hamilton-Fairfield Airport, Hamilton, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 UTC, November 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

##### SUPPLEMENTARY INFORMATION:

##### History

On Friday, June 26, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Hamilton, OH, transition area (52 FR 24017).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6C dated January 2, 1987.

##### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Hamilton, OH, transition area to accommodate aircraft utilizing a new NDB-A SIAP to Hamilton-Fairfield Airport, Hamilton, OH.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

##### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

##### PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

##### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

##### Hamilton, OH [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Hamilton-Fairfield Airport (lat. 39°22'00"N.; long. 84°32'00"W), within 3.25 miles either side of the 283° bearing from the Hamilton NDB, extending from the 6.5 mile radius area to 11.5 miles west; excluding the portions within the Cincinnati, OH and Middletown, OH transition areas.

Issued in Des Plaines, Illinois, on August 14, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-19385 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 14 CFR Part 1201

##### Statement of Organization and General Information

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is amending 14 CFR Part 1201, "Statement of Organization and General Information," to reflect the current organizational structure, including the Inspector General responsibilities. This regulation sets forth NASA's policy and functions as established by the National Aeronautics and Space Act of 1958, as amended.

**EFFECTIVE DATE:** August 25, 1987.

**ADDRESS:** Personnel and General Management, Code NPN-1, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Herring, 202-453-2922.

**SUPPLEMENTARY INFORMATION:** NASA is revising § 1201.200 to correct NASA's organizational structure and to set forth the Inspector General responsibilities and guidance for reporting fraud, waste, and mismanagement. Paragraphs (a)(3) and (c)(3) of § 1201.300 are revised to delete reference to the Index/Digest of Decisions and to indicate where the decisions of the Board of Contract Appeals and the Inventions and Contributions Board are maintained. Added as § 1201.402(b) is the NASA-developed computer software contact, COSMIC. This has caused the renumbering of preceding paragraphs in § 1201.402.

This regulation does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

##### List of Subjects in 14 CFR Part 1201

Organization and functions (Government agencies).

For reasons set forth in the Preamble, 14 CFR Part 1201 is amended as follows:

**PART 1201—[AMENDED]**

1. The authority citation for 14 CFR Part 1201 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. Section § 1201.200 is revised to read as follows:

**§ 1201.200 General.**

(a) Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters located in Washington, DC. NASA Headquarters is comprised of:

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator (Policy), Associate Deputy Administrator (Institution), Assistant Deputy Administrator, and the Executive Officer;

(2) Five Program Offices which are responsible for planning and directing agencywide research and development programs, and management and administrative processes;

(3) Fourteen Headquarters Offices which provide agencywide leadership in certain administrative and specialized areas.

All of these offices report directly to the Administrator.

(b) Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. Certain types of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians. NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to Directors of Field Installations. NASA's eight field installations have different and broad capabilities. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices (NASA Management Instruction 1101.2).

(c) The NASA field installations are as follows:

(1) Ames Research Center, Moffett Field, CA 94035.

(2) Goddard Space Flight Center, Greenbelt, MD 20771.

(3) John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(4) Langley Research Center, Langley Station, Hampton, VA 23665.

(5) Lewis Research Center, Cleveland, OH 44135.

(6) Lyndon B. Johnson Space Center, Houston, TX 77058.

(7) George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.

(8) National Space Technology Laboratories, NSTL Station, MS 39520.

(d) The NASA Office of Inspector General is established pursuant to Act of Congress, Pub. L. 95-452, as amended, 5 U.S.C. App. III. The Inspector General is appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General appoints an Assistant Inspector General for Auditing, who is responsible for supervising the performance of auditing activities relating to NASA's programs and operations, and an Assistant Inspector General for Investigations, who is responsible for supervising the performance of NASA's investigative activities. It is the duty and responsibility of the Inspector General to provide policy direction, to conduct, supervise and coordinate audits and investigations related to NASA's programs and operations in order to promote economy and efficiency, and to prevent and detect fraud and abuse in these programs and operations. The Inspector General must report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The Inspector General is responsible for keeping the Administrator and Congress fully and currently informed, by reports concerning fraud and other serious problems, abuses, and deficiencies related to NASA's programs and operations, for recommending corrective actions, and for reporting on the progress in implementing such corrective actions. The Inspector General reports to the Administrator, but neither the Administrator nor the Deputy Administrator can prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena under authority of the Inspector General Act. In carrying out these responsibilities the Inspector General shall comply with standards established by the Comptroller General of the United States for audits of governmental organizations, programs,

activities, and functions. The Inspector General reports to Congress on a semiannual basis, summarizing the activities of the office. These reports are available to the public upon request within 60 days of their transmission to the Congress. Anyone wishing to report instances of fraud, waste, or mismanagement in NASA's programs and operations, can call the Inspector General Hotline at 755-3402 in the Washington, DC area or toll free (800) 424-9183 for all other areas. The office maintains a 24-hour answering service. Identities of complainants can be kept confidential. Written complaints can be sent to the NASA Inspector General, P.O. Box 23089, L'Enfant Plaza Station, Washington, DC 20026.

(e) For more detailed description of the organization and functions of the Headquarters and field installations, see the "U.S. Government Manual."

3. Section 1201.300 paragraphs (a)(3) and (c)(3) are revised to read as follows:

**§ 1201.300 [Amended]**

\* \* \* \* \*

(a) \* \* \*

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board of NASA Headquarters, Washington, DC. Decisions and orders issued after July 4, 1967 are available for inspection and for purchase at NASA Information Centers.

\* \* \* \* \*

(c) \* \* \*

(3) The decisions of the Board on requests for waiver are available for inspection at NASA Headquarters, Office of Inventions and Contributions Board.

4. Section 1201.402 is revised to read as follows:

**§ 1201.402 NASA Industrial Applications Centers.**

(a) As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial

Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests and assist in interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(1) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204.

(2) NASA Florida State Technology Applications Center, State University System of Florida, 307 Weil Hall, Gainesville, FL 32611.

(3) NASA/UK Technology Applications Program, University of Kentucky, 109 Kinkead Hall, Lexington, KY 40506-0057.

(4) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260.

(5) New England Research Application Center (NERAC), Mansfield Professional Park, Storrs, CT 06268.

(6) North Carolina Science and Technology Research Center (NC/STRC), P.O. Box 12235, Research Triangle Park, NC 27709.

(7) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(8) Kerr Industrial Applications Center (KIAC), Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701.

(9) NASA Industrial Applications Center (WESRAC), University of Southern California, Research Annex, 3716 South Hope Street, Room 200, Los Angeles, CA 90007.

(b) To obtain access to NASA-developed computer software, contact: Computer Software Management and Information Center (COSMIC), University of Georgia, Athens, GA 30602.

James C. Fletcher,  
Administrator.

[FR Doc. 87-19285 Filed 8-24-87; 8:45 am]

BILLING CODE 7510-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Dkt. C-3212]

#### C&D Electronics, Inc., et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting

unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Jenison, Mich. manufacturer and marketer of cable television decoders to cease selling or distributing the decoders to any unauthorized purchasers. Additionally, respondents are required to cease representing that: (1) Consumers can lawfully own or use decoders; (2) the use of decoders is legal without authorization from a cable company; or (3) ownership or use of a cable decoder is similar to the ownership or use of a telephone. Further, respondents are required to make an affirmative disclosure with the sale of any of their cable television decoders.

DATE: Complaint and Order issued March 6, 1987.<sup>1</sup>

#### FOR FURTHER INFORMATION CONTACT:

Alan E. Krause, Esq., Chicago, Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603, (312) 353-4423.

SUPPLEMENTARY INFORMATION: On Wednesday, February 26, 1986, there was published in the Federal Register, 51 FR 6745, a proposed consent agreement with analysis in the Matter of C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Section 13.10 Advertising falsely or misleadingly; § 13.235-50 Maker or seller, etc. Subpart—Aiding, Assisting, and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting, and abetting unfair or unlawful act or practice. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures. Subpart—Misrepresenting Oneself & Goods: § 13.1745-60 Maker or seller.

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 8th Street and Pennsylvania Avenue NW., Washington, DC 20580.

## List of Subjects in 16 CFR Part 13

Cable television decoders, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-19409 Filed 8-24-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 154

[Docket No. RM83-71-040, 041; Order No. 380-F]

#### Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

Issued August 19, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and clarifying Order No. 380-E.

SUMMARY: On rehearing of Order No. 380-E (51 FR 23530; June 30, 1986), 35 FERC ¶ 61,384 (1986), the Federal Energy Regulatory Commission (Commission) denies the requests for rehearing of Midwestern Gas Transmission Company and Indiana Gas Company, Inc. (Indiana Gas). The Commission also clarifies that Order No. 380-E did not prejudice factual issues in pending litigation respecting whether certain costs are fixed or variable costs for purposes of the Commission's rule, § 154.111, eliminating variable costs from interstate pipeline minimum commodity bill tariff provisions, 18 CFR 154.111 (1987). Order No. 380-E explained and affirmed the Commission's interpretation that § 154.111 bars a "downstream pipeline" (one that purchases natural gas from another, i.e., "upstream", pipeline) from using its own minimum commodity bill to pass through the cost of minimum commodity bill charges it pays to its upstream pipeline supplier.

DATE: This order was issued on August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357-8492.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

**Order Denying Rehearing and Clarifying Order No. 380-E**

In Order No. 380-E,<sup>1</sup> on remand from the Court of Appeals' decision in *Wisconsin Gas Co. v. FERC* (Wisconsin Gas),<sup>2</sup> the Federal Energy Regulatory Commission (Commission) explained the reasons for its policy of requiring a "downstream pipeline" to pass through "upstream pipeline" minimum commodity bill charges in the downstream pipeline's purchased gas adjustment (PGA). In so doing, the Commission upheld the position underlying Order No. 380-A<sup>3</sup> that section 154.111 of its regulations (which was promulgated by Order No. 380)<sup>4</sup> bars downstream pipelines from using their own minimum commodity bill tariff provisions to pass through such upstream pipeline minimum commodity bill charges. *Midwestern Gas Transmission Company* (*Midwestern*), a downstream pipeline, and *Indiana Gas Company, Inc.* (*Indiana Gas*), a customer of a downstream pipeline, each filed requests for rehearing of Order No. 380-E. As discussed below, we shall deny rehearing but shall also clarify Order No. 380-E.

**Background**

Order No. 380 promulgated § 154.111 which, in paragraph (a)(2), provides:

No rate schedule or tariff governing the sale of natural gas and filed on or after July 31, 1984 may provide for recovery of variable costs associated with gas not taken by the buyer.<sup>5</sup>

Under the Commission's own definitions, variable costs (which are barred from minimum commodity bill pass through) are those costs that vary with the pipeline's throughput; fixed costs do not vary with throughput. In response to Order No. 380, *Midwestern* requested that the Commission clarify that only the variable cost portion of the upstream commodity charge would be considered variable for purposes of the downstream pipeline's own commodity charges. *Midwestern* sought to begin passing through its upstream pipeline supplier's fixed cost minimum commodity bill charges in its own minimum commodity bills. In Order No. 380-A, the Commission rejected the

requested clarification on the basis that such upstream commodity charges are variable costs of gas that are barred from minimum commodity bills by section 154.111. The Commission clarified that *Midwestern* and other downstream pipelines are guaranteed recovery of such charges in their PGA's.

Following an appeal by *Midwestern* and a remand by the Court in *Wisconsin Gas* to address certain questions posed by the Court, the Commission issued Order No. 380-E. There the Commission addressed the Court's questions, explained the Commission's previous orders, and stood by its earlier interpretation of section 154.111 and its PGA passthrough policy.

In Order No. 380-E the Commission focused on the nature of the minimum commodity bill charges to *Midwestern* and found that because they vary with the amount of gas *Midwestern* buys, they were, by the Commission's long-standing definition, "variable costs." Accordingly, the Commission held that § 154.111 applies to such charges and bars their passthrough in the downstream pipeline's minimum commodity bill.

In the meantime, following issuance of Order No. 380-E, the Commission issued Opinion No. 249<sup>6</sup> which, among things, found Tennessee's minimum commodity bill to be unjust and unreasonable and ordered it removed. We have denied rehearing on this issue in Opinion No. 249-A. However, because that Opinion is not final as it is subject to judicial appeal, we will address *Midwestern's* request for rehearing filed before Opinion No. 249 issued.

**Midwestern's Request for Rehearing**

Upon review of *Midwestern's* request for rehearing of Order No. 380-E, we find that, for the most part, *Midwestern* simply has repeated arguments previously addressed in detail and rejected by that order. It does, however, add a few new arguments that we will address.

*Midwestern* restates its claim that because the upstream pipeline's fixed cost minimum commodity bill recovers only fixed costs, they are not purchased gas costs "in" the upstream pipeline's rates and therefore should not be treated as purchased gas costs in the downstream pipeline's rates. As we observed in Order No. 380-E, this ignores the fact that these costs are commodity purchased gas costs to *Midwestern*. Further, this type of argument completely misses the mark.

The issue is: do the upstream charges vary with the amount of gas that the downstream pipeline buys? The answer clearly is yes. The more gas *Midwestern* buys (up to its minimum bill level), the less of a minimum commodity bill charge it pays, and vice versa. That is a variable cost to *Midwestern* and covered by § 154.111.<sup>7</sup>

*Midwestern* reiterates its claims that PGA passthrough, as opposed to minimum commodity bill passthrough of such upstream charges violates the Commission's "as-billed" principle of *Northwest Alaskan Pipeline Co.*, 11 FERC ¶ 61,088 at 61,182-3 (1980). It asserts, without further explanation, that the Commission has ignored the difference between what it calls "simple" upstream commodity charges and upstream minimum commodity bills. We previously explained in Order No. 380-E that, as variable commodity gas costs, PGA treatment of upstream pipeline minimum commodity bill charges is fully consistent with the as-billed principle. *Midwestern's* unexplained distinction of minimum commodity bill charges from "simple" commodity charges is not persuasive and is rejected.

*Midwestern* reiterates its previously rejected claim that the Commission's PGA passthrough policy causes an inequitable allocation of upstream minimum commodity bill costs to those customers who take the most gas, instead of to those who reduce their purchases by swinging off the system. However, it now argues that Order No. 380-E was flawed because it required "mathematical precision" to show a nexus between the actions of a downstream pipeline's customers and its own incurrence of upstream pipeline minimum commodity bill charges.

We disagree. What the Commission demonstrated in Order No. 380-E was that there is no *per se* connection between a given reduction in takes by any given customer and the incurrence of upstream minimum commodity bill charges. The Commission thus rejected what *Midwestern* superficially

<sup>7</sup> *Midwestern* agrees that such costs vary with the quantity of gas purchased. However, because the variance is inverse to the quantity purchased, instead of direct, it argues that these charges turn into "fixed" costs. We disagree. A variance is nonetheless a variance whether inverse or direct. We note that *Midwestern's* own FERC Gas Tariff, First Revised Volume No. 1 at Substitute First Revised Sheet No. 21 (effective January 1, 1986) expresses its rate schedule minimum commodity rates on a cents per dth basis. For example, the CD-1 minimum commodity bill rate is 17.42 cents per dth which is multiplied by the difference between the dekatherms that buyer actually took in a given month and the lesser of two minimum quantity limitations.

<sup>1</sup> 35 FERC ¶ 61,384 (1986).

<sup>2</sup> 770 F.2d 1144 (D.C. Cir. 1985).

<sup>3</sup> FERC Stat. & Reg. [Reg. Preambles 1982-1985] ¶ 30,584 at 31,043 (1985).

<sup>4</sup> FERC Stat. & Reg. [Reg. Preambles 1982-1985] ¶ 30,571 (1984).

<sup>5</sup> 18 CFR 154.111 (1987).

<sup>6</sup> *Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.*, 36 FERC ¶ 61,071 (1986), reh'g denied Opinion No. 249-A, 40 FERC ¶ 61,141 (1987).

presented as an attempt to protect its small volume customers. The Commission observed that Midwestern's proposal actually could result in a disproportionate burden on its minimum-billed customers. The Commission concluded by noting that if inequities arise in an individual case, customers who believe they are harmed may raise specific claims in the downstream pipeline's next PGA or section 4 rate case or may initiate a separate complaint proceeding. Midwestern has offered no reason why that protection to its customers is insufficient.

Finally, Midwestern attempts to rebut the Commission's observation in Order No. 380-E that, if these upstream charges are fixed costs, then they could not be "caused" by a downstream pipeline customer's failure to take gas since, by definition, fixed costs do not vary with throughput. Midwestern now concedes that the upstream pipeline's fixed costs were not caused by any downstream pipeline customer's act of failing to take gas. However, Midwestern contends that fact misses the point, i.e., that upstream minimum commodity bill charges are caused by such a failure to take and so should be allocated to customers that fail to take gas. Not only, as discussed above, is there no basis for Midwestern's claimed causation, but also the claim is wholly inconsistent with Midwestern's basic position. Midwestern's entire case for minimum commodity bill recovery (rather than PGA recovery) of such charges has been premised on its argument that the costs at issue (upstream pipeline minimum commodity charges) are fixed, not variable, costs to Midwestern. Midwestern cannot simultaneously claim that upstream minimum bill charges are: (a) Fixed costs eligible for pass through in its own commodity bill and (b) variable costs that are caused by (and can be allocated to) customers who fail to take Midwestern's gas.

#### *Indiana Gas' Request for Rehearing*

Indiana Gas' principal contention on rehearing is that Order No. 380-E prejudices issues concerning the types of costs that are "fixed costs" and how they should be recovered which were fully litigated in *Panhandle Eastern Pipe Line Company (Panhandle)*, Docket No. RP82-58-000. Indiana Gas argues that this alleged prejudgment conflicts with Order Nos. 380 and 380-B<sup>8</sup> as these

issues were to be resolved on a case-by-case basis. It asks us to modify Order No. 380-E to clarify that "the types of fixed costs and the manner in which upstream pipeline fixed costs are to be treated in the downstream purchasing pipeline's rates are to be considered in individual rate cases."<sup>9</sup>

We generally concur that questions of whether a particular cost is or is not a variable cost and whether PGA recovery will cause inequities are factual questions that should be considered in individual rate cases. Further, our general conclusion that minimum commodity bills are variable costs was premised on the assumption that, like Midwestern's minimum commodity bill, minimum commodity bills in general are variable costs to the entity that pays them. However, any litigant is free to show that a given charge is not incurred by the purchaser as a variable cost. The definitional test is quite simple and straight forward: if the charge varies with the purchaser's throughput, then it is a variable cost, if not, then it is a fixed cost. Indiana Gas has had the opportunity in *Panhandle* to argue that the types of upstream costs involved there were fixed costs.<sup>10</sup>

E and argues that the Commission ignored substantial record evidence in the rulemaking docket that quantified "the substantial fixed costs that would inevitably be shifted to Panhandle's full-requirements customers if the Commission were to allow fixed costs of the downstream pipeline to be treated as variable and recovered through the pipeline's PGA clause."<sup>11</sup> It asserts that this evidence is contained in an affidavit attached to its application for rehearing of Order No. 380-A.

The Commission has not ignored Indiana Gas' Order No. 380-A rehearing request or the affidavit attached to it; we just disagree that it is persuasive. In Order No. 380-B, the Commission addressed Indiana Gas' allegation that partial requirements customers could evade "their fixed cost responsibility" by simply discontinuing their gas purchases. The result, Indiana Gas asserted, would be that the partial requirements customers would avoid "paying" the fixed costs embedded in the upstream minimum commodity bills and that such costs would be shifted to

full requirements customers. The Commission responded by noting that Indiana Gas could raise such cost shifting issues in its pipeline supplier's next PGA or section 4 rate proceeding. The Commission did not attempt to decide that factual issue based on the affidavit attached to Indiana Gas' rehearing request.<sup>12</sup> We will not do so here either, inasmuch as the proper forum to address its claims was the section 4 *Panhandle* proceeding in Docket No. RP82-58-011, *et al.*, in which it had the opportunity to make its case for minimum bill passthrough. In our rehearing order issued today in that proceeding we considered Indiana Gas' arguments and evidence and found them to be unpersuasive.

Indiana Gas makes a number of other arguments that warrant a brief response. It argues that the Commission has focused on the labels of costs (as demand or commodity) rather than on their nature (as fixed or variable). That claim is incorrect. Order No. 380-E is replete with references to the variable nature of these costs to the downstream pipeline. Indiana Gas, like Midwestern, focuses on how the cost is incurred by the upstream pipeline (as a fixed cost) instead of on how the billing to and payment by the downstream pipeline are accomplished (as a variable charge). It is the latter variable charge that is at issue, not the former.

Indiana Gas also argues that Order No. 380-E is arbitrary, capricious and an abuse of discretion because it precludes recovery of Trunkline LNG Company's (TLC) minimum bill costs (which the Commission has previously determined to be fixed costs) in downstream pipeline minimum bills. In Order No. 380-A, the Commission stated that TLC's situation was an unusual one insofar as its certificate for its LNG facilities included special authorization to treat its Algerian LNG supplier's minimum bills as fixed costs so as to not jeopardize debt service for TLC's LNG import project in the event of supply interruptions.<sup>13</sup> That special circumstance does not constitute any form of general rule that upstream supplier minimum commodity bills are fixed costs to the downstream pipeline that pays them.

Finally, with respect to its arguments regarding TLC, Indiana Gas asserts that it was an error if the Commission intended in Order No. 380-E to pretermitt any consideration in individual rate

<sup>8</sup> Indiana Gas Request for Rehearing at 14.

<sup>10</sup> In a companion order in Opinion No. 265-A, *Panhandle Eastern Pipe Line Co.*, Docket No. RP82-58-011-017, — FERC ¶ — (1987), we denied rehearing of Opinion No. 265 which affirmed the presiding administrative law judge's finding that eight types of costs cited by Indiana Gas were variable gas costs. 38 FERC ¶ 61,164 (1987).

<sup>11</sup> Indiana Gas Request for Rehearing at 10.

<sup>12</sup> We note that Indiana Gas did not appeal Order No. 380-B.

<sup>13</sup> FERC Stat. & Reg. [Reg. Preambles 1982-1985] ¶ 30,584 at 31,062-63 (1984).

<sup>8</sup> 29 FERC ¶ 61,076 (1984).

cases of "the downstream pipeline's partial requirements customer's responsibility for shouldering any of the downstream pipeline's minimum bill payments to the upstream pipeline." That was not our intent and, indeed, is contrary to our policy expressed in Order Nos. 380-A and 380-E that all customers should bear responsibility for such variable charges in accordance with the amount of gas that they buy from the downstream pipeline. As we emphasized earlier in this order and in Order Nos. 380-B and 380-E, the issue of cost responsibility can be raised in a PGA or section 4 proceeding.

For the reasons set forth above and in Order No. 380-E, the Commission finds that Midwestern and Indiana Gas have raised no new facts or principles of law that warrant a modification of Order No. 380-E. To the extent not specifically discussed herein, all other arguments are rejected.

#### *The Commission orders:*

Except to the extent clarified above, the requests for rehearing of Order No. 380-E are denied.

By the Commission.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-19421 Filed 8-24-87; 8:45 am]  
BILLING CODE 6717-01-M

#### 18 CFR Part 389

[Docket No. RM87-31-000 et al; Order No. 479]

#### Procedures for Determining High-Cost Natural Gas Produced From Tight Formations

August 20, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; notice of OMB Control Number.

**SUMMARY:** On July 29, 1987, the Federal Energy Regulatory Commission issued a final rule (Order No. 479) in Docket No. RM87-31-000, 52 FR 29,003 (Aug. 5, 1987), changing the procedures for qualifying gas as high cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978. The information collection provisions in the rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. OMB has provided an OMB control number.

**EFFECTIVE DATE:** August 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Julia Lake White, Office of the General

Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987) require that OMB approve information collection requirements imposed by agency rule. OMB has approved the information collection requirements of the tight formation designation procedures in Order No. 479. OMB issued Control Number 1902-0112 for § 271.703(c) of the Commission's regulations. The control number is effective August 20, 1987.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Kenneth F. Plumb,  
Secretary.

#### List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

#### PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) (1982).

##### § 389.101 [Amended]

2. The table of OMB control numbers in § 389.101(b) is amended by inserting "271.703(c)" in numerical order in the "section" column and "0112" in the corresponding position in the "OMB control number" column.

[FR Doc. 87-19420 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

#### 21 CFR Part 74

[Docket No. 86C-0192]

#### Confirmation of Effective Date for FD&C Yellow No. 6

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of July 9, 1987, for the final rule that amended the color additive

regulations to modify the manufacturing process for FD&C yellow No. 6.

**EFFECTIVE DATE:** Effective date confirmed: July 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 8, 1987 (52 FR 21505), FDA amended § 74.706(a)(1) (21 CFR 74.706(a)(1)) to provide for the use of sulfuric acid in the diazotization step of the manufacturing process for FD&C Yellow No. 6.

FDA gave interested persons until July 8, 1987, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the Federal Register of June 8, 1987, should be confirmed.

#### List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 8, 1987, final rule. Accordingly, the amendment promulgated thereby become effective July 9, 1987.

Dated: August 19, 1987.

John M. Taylor,  
Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-19395 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-01-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Parts 207 and 255

[Docket No. R-87-1300; FR-2224]

#### Section 223(f) Mortgage Insurance; Inspection Fees for Repairs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule revises current regulations governing the section 223(f) mortgage insurance programs to authorize the charging of an inspection fee where the application for mortgage insurance (or coinsurance) covering an existing multifamily project involves the carrying out of repairs and improvements.

**EFFECTIVE DATE:** October 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The current regulation for the full insurance of existing multifamily projects pursuant to section 223(f) expressly states that "No inspection fee will be required" in connection with the transaction (see 24 CFR 207.32a(a)(4)). Under similar Part 255 coinsurance, there is a provision in the current regulation authorizing the coinsuring lender to collect an inspection fee "if applicable" (see 24 CFR 255.206(a)). To date, HUD has limited the charging of inspection fees in coinsurance to cases where the project is also receiving assistance under the Rental Rehabilitation (24 CFR Part 511) or Housing Development Grant (24 CFR Part 850) program. This rule revises both § 207.32a(a)(4) and § 255.206(a) to permit, in cases where an application provides for the completion of repairs and improvements, an inspection fee to be charged by the FHA Commissioner (or, in the case of the coinsurance rule, by the lender). The fee for projects involving repairs may be up to one percent of the cost of repairs and improvements.

This revision is needed if the section 223(f) programs are to be effectively administered. Under both the full insurance and the coinsurance programs, allowable repairs are for up to \$6500 per unit (adjusted by any high-cost factor for the area), and if the project is assisted under the Part 511 Rental Rehabilitation or the Part 850 Housing Development Grant program, allowable costs may go up to \$25,000 per dwelling unit. Program experience has demonstrated that most section 223(f) projects involve repairs and improvements and that a uniform procedure for inspection of these repairs is essential.

On October 8, 1986, the Department published a proposed rule in the *Federal Register* (51 FR 36021) revising the section 223(f) mortgage insurance program regulations to authorize the

charging of an inspection fee where the application for mortgage insurance (or coinsurance) involves repairs and improvements. The rule proposed a two-tier fee structure to cover inspection costs, with repair and improvement costs of \$3000 serving as the dividing point.

Four public comments were received. Three comments were favorable, with one also providing specific recommendations for improving the rule. The fourth commenter objected to the inspection fee, contending that charging an inspection fee would have an adverse impact on the Federal budget. We disagree, since we believe that the charging of inspection fees will lessen budgetary impact. The Department must use staff to make necessary inspections and is justified in charging the mortgagor for this service. In the case of coinsured projects, the coinsuring lender must see to the performance of the inspection and should be compensated. Inspection fees have consistently been charged under HUD's other multifamily mortgage insurance programs.

Of the three favorable comments, one commenter specifically recommended that the fee apply only to repair not completed at the time of endorsement. We do not agree with this suggestion. It would not provide compensation for inspections before endorsement, and providing adequate compensation for inspections is a primary reason for this regulation change.

The same commenter suggested that a single one percent fee structure would be simpler than the proposed two-tier system, and would facilitate bookkeeping. The proposed rule's two-tier structure was based on the cost of repairs; i.e., a fee of one percent of the repair cost for repairs over \$3000 per unit, and a flat fee of \$30 per unit in cases where the cost of repairs was under \$3000 per unit. The flat rate (\$30 per unit for repairs under \$3000 per unit) was intended to ensure a minimal fee amount for cases where the cost of repairs was so minor that the one percent factor would not cover the actual costs of inspection. The higher one percent fee would apply where repairs are extensive, inspection visits more frequent, and more complex repair items are usually involved. While a single, one percent fee structure would be more simple to administer, we believe the two tier structure proposed is more equitable in that it reflects more accurately actual inspection costs. This final rule therefore, retains the two tier structure as it was originally set forth in the proposed rule.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the

Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The inspection fee is reasonably related to the cost of inspection services and, for small projects, the fee is very modest. Similar fees, charged in other FHA multifamily programs, have not been a burden on small entities.

This rule was listed under the Office of Housing, item H-20-86 (sequence number 960) in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14387) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.173.

#### List of Subjects

##### 24 CFR Part 207

Mortgage insurance, Rental housing.

##### 24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are amended as follows:

#### PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

**Authority:** Secs. 207, 211, National Housing Act, (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. Section 207.32a(a)(4) is revised to read as follows:

**§ 207.32a Eligibility of mortgages on existing projects.**

(4) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee may be charged by the Commission. A fee of \$30 per dwelling unit will be charged where the project involves repairs of \$3000 or less per unit. The fee for projects involving repairs in excess of \$3000 per dwelling unit may not exceed one percent of the cost of the repairs.

**PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OR FINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS**

3. The authority citation for Part 255 continues to read as follows:

**Authority:** Secs. 211, 244, National Housing Act, 12 U.S.C. 1715b, 1715z(9); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Paragraph (a) of § 255.206 is revised to read as follows:

**§ 255.206 Lender's fees and premium.**

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and where an application provides for the completion of repair and improvements, an inspection fee. These fees may not exceed maximums approved by the Commissioner. In the case of inspection fees, a fee of up to \$30 per dwelling unit may be charged where the project involves repairs of \$3000 or less per unit. The fee for projects involving repairs in excess of \$3000 per dwelling unit may not exceed one percent of the cost of repairs. The lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under § 207.32a of this chapter.

Date: August 20, 1987.

**James E. Schoenberger,**  
General Deputy Assistant Secretary for  
Housing—Federal Housing Commissioner.  
[FR Doc. 87-19480 Filed 8-24-87; 8:45 am]  
BILLING CODE 4210-27-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

[T.D. 8153]

**Income Taxes; Recapture of Overall Foreign Losses**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the recapture of overall foreign losses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide the public with the guidance needed to comply with that Act and may affect taxpayers receiving income from foreign sources. The regulations do not reflect changes made to section 904(f) by the Tax Reform Act of 1986 and therefore for taxable years beginning after December 31, 1986, some provisions of these regulations may not apply.

**DATES:** The amendments are effective for taxable years beginning after December 31, 1975 except for the amendments under § 1.1502-9, which are effective for taxable years for which the due date (without extensions) for filing returns is after September 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Carolyn DuPuy of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL-47-86), (202) 566-3289, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 904(f) of the Internal Revenue Code of 1954. These amendments are made to conform the regulations to section 1032 of the Tax Reform Act of 1976 (90 Stat. 1624) and are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). The amendments under paragraph 3 are also issued under the authority contained in section 1502 of the Internal

Revenue Code (68A Stat. 637, 26 U.S.C. 1502).

On January 24, 1986, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections (904 and 1502 of the Internal Revenue Code of 1954 (51 FR 3193). On April 2, 1986, the Federal Register published corrections to the proposed regulations (51 FR 11324). The amendments provide rules for determining a taxpayer's overall foreign losses in a taxable year and for determining how and when such losses will be recaptured. In addition, the amendments provide rules for determining overall foreign losses on a consolidated basis.

Numerous written comments were received with respect to the proposed regulations. A public hearing was held on June 5, 1986. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

**Discussion of Major Comments and Revised Amendments**

**Section 1.904(f)-1 Overall foreign loss and overall foreign loss accounts.**

Paragraphs (a) and (c) of § 1.904(f)-1 have been revised to provide that for taxable years beginning prior to January 1, 1983, a taxpayer will be allowed to net losses and income subject to the separate limitations in former section 904(d)(1)(A) (passive interest limitations), (B) (DISC dividend limitation), and (C) (general limitation) (prior to amendment by the Tax Reform Acts of 1984 and 1986) in determining whether the taxpayer incurred an overall foreign loss. This alternative is available to a taxpayer only if the taxpayer filed its pre-1983 return using this method of computing overall foreign losses.

The proposed amendments required all taxpayers to determine whether they had overall foreign losses on a separate limitation basis for all years beginning after December 31, 1975. Many commenters criticized this position in the proposed regulations. Nevertheless, for taxable years beginning after December 31, 1982 and before January 1, 1987, the final regulations retain the requirement that overall foreign losses must be determined on a separate limitation basis. The determination of overall foreign losses on a separate

limitation basis, while not clearly required by the statute, is consistent with Congressional intent as expressed in section 904(d) to prevent United States tax on separate limitation items from being reduced by foreign tax credits attributable to other types of income. If this intent is to be effectuated, the separate limitations approach should apply when there is a loss under a separate limitation as well as when there is income. However, because this requirement is not clear on the face of the statute and taxpayers could, in the absence of regulations, reasonably have computed their foreign losses on an overall basis, the requirement that overall foreign losses be determined on a separate limitation basis will only be applied to the extent all taxpayers would have had open years at the time the proposed regulations were issued.

*Section 1.904(f)-2 Recapture of overall foreign losses.*

In response to comments, paragraph (b) has been modified to delete the requirement that section 904(a) apply before recapture under section 904(f). Therefore, under the final regulations, recapture will apply before the application of section 904(a).

Paragraph (c) has been revised to provide for recapture in years in which taxpayers deduct and do not credit foreign taxes. A number of taxpayers objected to the fact that, under the proposed regulations, recapture was limited to cases in which there was a reduction in a taxpayer's foreign tax credit limitation. This provision was changed because, to the extent a taxpayer deducts its foreign taxes and its foreign taxable income minus foreign taxes paid is subject to United States tax, the double benefit that section 904(f) is intended to prevent is not present. In cases in which the amount of recapture (foreign taxable income minus foreign taxes paid) in a deduction year exceeds fifty percent of the foreign source taxable income subject to recapture, taxpayers will be deemed to have elected under section 904(f)(1)(B) to recapture such larger percentage that the recapture amount represents.

In addition, in response to comments, paragraph (c) has been clarified with respect to the treatment of the overall foreign losses of a section 936 corporation that was a member of a consolidated group. The final regulations provide that in the case of a section 936 corporation that was previously part of a consolidated group, the possession source income, including qualified possession source investment income, shall be used to recapture the portion of any overall foreign loss that

was allocated to the section 936 corporation under § 1.1502-9.

Paragraph (c) has also been revised to provide a rule for recapturing from post-1982 income pre-1983 overall foreign losses incurred when taxpayers computed their pre-1983 overall foreign losses on a combined basis. That rule provides that overall foreign loss accounts created in taxable years beginning before January 1, 1983 and computed on a combined basis shall be recaptured solely out of foreign source income subject to the general limitation. A similar transition rule for overall foreign losses that are part of net operating losses is added in § 1.904(f)-3 (c).

Paragraph (d)(4)(iv) provides an ordering rule for dispositions in which gain is deemed to be recognized. That paragraph was changed to add a rule that provides for recapture on a pro rata basis when there is a simultaneous transfer of more than one asset in a disposition subject to the rules in section (d)(4).

Paragraph (d)(5)(i) has been revised to provide two additional exceptions to the definition of dispositions for section 904(f)(3) purposes. Several commenters argued that the proposed regulation's definition of "disposition" was too broad and that, in light of the purpose of section 904(f)(3), the disposition rule should only apply to situations in which the disposition is of a type such that the taxpayer would escape application of the recapture rule. It was, therefore, suggested that the regulations be amended to include an exception to the disposition rule for any transaction in which after the transaction a taxpayer is as likely to recapture the balance of its overall foreign loss account as before the transaction. It was decided that such an exception to the disposition rule was inappropriate both because it is contrary to the statutory definition of a disposition in section 904(f)(3)(B)(i) and because an exception based on a subjective judgment as to whether or not the overall foreign loss is likely to be recaptured would not be administrable. However, paragraph (d)(5)(i) has been revised to except from the definition of disposition two specific situations: (1) Transactions in which gross income is not realized (such as farmouts); and (2) the entering into of certain unitization or pooling agreements in which gain from any subsequent disposition would be entirely foreign source. The exception for non-realization events is a clarifying change. The exception for pooling and unitization agreements was made because such arrangements are essentially financing transactions. The

pooling exception is limited to cases in which the subsequent disposition would generate all foreign source income in order to eliminate the potential for avoidance of overall foreign loss recapture.

In response to one commenter's suggestion, paragraph (d)(5)(ii) has been revised to provide that, for purposes of section 904(f)(3), stock of a corporation will not be considered property used in a trade or business if a substantial investment motive exists for acquiring and holding the stock. This change was made to conform these rules to the standard developed in *Corn Products Refining Co. v. Commissioner*, 350 U.S. 46 (1955), as applied by the Service in Rev. Rul. 78-94, 1978-1 CB 58.

Paragraph (d)(5)(ii) has also been revised to provide that a partnership interest will be property used in a trade or business if the underlying assets of the partnership would be property used in a trade or business. Without such a rule, recapture of overall foreign losses incurred by a partner could be avoided by structuring a disposition of partnership assets as the disposition of a partnership interest.

*Section 1.904(f)-3 Net operating loss carrybacks and carryovers.*

Paragraph (a) has been clarified to provide that an overall foreign loss that is part of a net operating loss first offsets foreign source taxable income in the carryback or carryover year that is subject to the same limitation as the loss, next offsets United States source taxable income in the carryback or carryover year and then offsets foreign source taxable income subject to other limitations.

Paragraph (c) has been added to provide a rule for the treatment of loss carryovers when a loss is incurred in a pre-1983 year and carried forward to a post-1982 year or when a loss is incurred in a post-1982 year and is carried back to a pre-1983 year. The rule provides that a post-1982 loss that is carried back to a pre-1983 year and creates an overall foreign loss in that year is treated as if the loss arose in the post-1982 year. The rule also provides that a pre-1983 loss that is carried forward and creates an overall foreign loss in a post-1982 year is treated as if it arose in a post-1982 year. This ensures, to the maximum extent possible, that an overall foreign loss will be recaptured on a separate limitation basis, regardless of the method used by the taxpayer to compute overall foreign losses for pre-1983 years.

**Section 1.904(f)-6 Transition rules.**

Paragraph (a) provides transition rules for recapture of pre-1983 foreign oil related income (FORI) limitation and general limitation losses from post-1982 income subject to the general limitation. This paragraph has been revised to account for the revision to § 1.904(f)-1 (a) and (c) which allows pre-1983 overall foreign losses to be computed on a combined basis, if the taxpayer computed overall foreign losses in that manner on returns previously filed.

**Section 1.1502-9 Consolidated overall foreign loss accounts.**

In response to suggestions by several commenters, paragraph (b)(1)(iii) has been revised to limit the recapture of an overall foreign loss from a separate return limitation year (SRLY) to 50% of the consolidated foreign source taxable income minus 50% of such income recomputed by excluding the items of income and deduction of the SRLY member.

A suggestion that paragraph (b) be revised to provide that an overall foreign loss that a part of a net operating loss carryover be classified as a SRLY loss only if the loss reduced United States income in a SRLY year was not adopted because it was considered to be inconsistent with the rules for allocating consolidated overall foreign losses to departing members of the group. It was decided that, in both cases, the appropriate focus was on the year in which the loss arose rather than the carryover year.

In response to one comment, paragraph (e) has been revised to provide that dispositions between members of an affiliated group will not automatically trigger 904(f)(3) recapture. However, gain will be recognized (and a loss recaptured) to the extent of the balance in the selling member's SRLY overall foreign loss account unless the selling member adds the balance in its SRLY overall foreign loss account to the applicable consolidated overall foreign loss account. The effect of this requirement is to recharacterize SRLY overall foreign losses as overall foreign losses arising in a consolidated year. This new rule, which permits a taxpayer to defer intercompany profit notwithstanding SRLY overall foreign losses, has been adopted because it more closely follows the consolidated group provisions on intercompany dispositions. Recharacterization is required so that the recapture rule cannot be circumvented. Without such recharacterization as a consolidated overall foreign loss, income derived from such transferred property could

avoid recapture. The selling member might have no subsequent foreign source income and if the overall foreign loss remained a SRLY overall foreign loss, it could only be recaptured to the extent of the selling member's foreign source income.

**Special Analyses**

It has been determined that this regulation will not have a significant economic impact on a substantial number of small entities. The number of small entities affected is minimal. Accordingly, these final regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6).

It has also been determined that this regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

**Paperwork Reduction Act**

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved under OMB number 1545-0121.

**Drafting Information**

The principal author of these final regulations is Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects****26 CFR 1.861-1 through 1.997-1**

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

**26 CFR 1.1501-1 through 1.1564-1**

Income taxes, Controlled group of corporations, Consolidated returns.

**26 CFR Part 602**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. \* \* Sections 1.904(f)-2 and 1.1502-9 are also issued under 26 U.S.C. 904 (f)(3)(b) and 26 U.S.C. 1502. \* \* \*

**Par. 2.** The following new §§ 1.904(f)-1 through 1.904(f)-6 are added immediately following § 1.904(b)-4 to read as set forth below:

**§ 1.904(f)-1 Overall foreign loss and the overall foreign loss account.**

(a) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. For taxable years ending after December 31, 1984, and beginning before January 1, 1987, there can be five types of overall foreign losses: a loss under each of the five separate limitations contained in former section 904(d)(1)(A) (passive interest limitation), (d)(1)(B) (DISC dividend limitation), (d)(1)(C) (foreign trade income limitation), (d)(1)(D) (foreign sales corporation (FSC) distributions limitation), and (d)(1)(E) (general limitation). For taxable years beginning after December 31, 1982, and ending before January 1, 1985, there can be three types of overall foreign losses under former section 904(d)(1)(A) (passive interest limitation), former section 904(d)(1)(B) (DISC dividend limitation) and former section 904(d)(1)(C) (general limitation). For taxpayers subject to section 907, the post-1982 general limitation overall foreign loss account may be further subdivided, as provided in § 1.904(f)-6. For taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers should have computed overall foreign losses separately under the passive interest limitation, the DISC dividend limitation, the general limitation, and the section 907(b) (FORI) limitation. However, for taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers may have computed only two types of overall foreign losses: A foreign oil related loss under the FORI limitation and an overall foreign loss computed on a combined basis for the passive interest limitation, the DISC dividend limitation, and the general limitation. A taxpayer that computed overall foreign losses for these years on a combined basis will not be required to amend its return to recompute such losses on a separate

basis. If a taxpayer computed its overall foreign losses for these years separately under the passive interest limitation, the DISC dividend limitation, and the general limitation, on returns previously filed, a taxpayer may not amend those returns to compute such overall foreign losses on a combined basis. Section 1.904(f)-1 provides rules for determining a taxpayer's overall foreign losses, for establishing overall foreign loss accounts, and for making additions to and reductions of such accounts for purposes of section 904(f). Section 1.904(f)-2 provides rules for recapturing the balance in any overall foreign loss account under the general recapture rule of section 904(f)(1) and under the special recapture rule of section 904(f)(3) when the taxpayer disposes of property used predominantly outside the United States in a trade or business. Section 1.904(f)-3 provides rules for allocating overall foreign losses that are part of net operating losses or net capital losses to foreign source income in years to which such losses are carried. In addition, § 1.904(f)-3 provides transition rules for the treatment of net operating losses incurred in taxable years beginning after December 31, 1982, and carried back to taxable years beginning before January 1, 1983, and of net operating losses incurred in taxable years beginning before January 1, 1983, and carried forward to taxable years beginning after December 31, 1982. Section 1.904(f)-4 provides rules for recapture out of an accumulation distribution of a foreign trust. Section 1.904(f)-5 provides rules for recapture of overall foreign losses of domestic trusts. Section 1.904(f)-6 provides a transition rule for recapturing a taxpayer's pre-1983 overall foreign losses under the general limitation and the FORI limitation out of taxable income subject to the general limitation in taxable years beginning after December 31, 1982. Section § 1.1502-9 provides rules concerning the application of these regulations to corporations filing consolidated returns.

(b) *Overall foreign loss accounts.* Any taxpayer that sustains an overall foreign loss under paragraph (c) of this section must establish an account for such loss. Separate types of overall foreign losses must be kept in separate accounts. For taxable years beginning prior to January 1, 1983, taxpayers that computed losses on a combined basis in accordance with § 1.904(f)-1(c)(1) will keep one overall foreign loss account for such overall foreign loss. The balance in each overall foreign loss account represents the amount of such overall foreign loss subject to recapture by the taxpayer in a given year. From year to year, amounts

may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section. The taxpayer must report the balances (if any) in its overall foreign loss accounts annually on a Form 1116 or 1118. Such forms must be filed for each taxable year ending after September 24, 1987. The balance in each account does not have to be attributed to the year or years in which the loss was incurred.

(c) *Determination of a taxpayer's overall foreign loss—(1) Overall foreign loss defined.* For taxable years beginning after December 31, 1982, and before January 1, 1987, a taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in paragraph (c)(2) of this section) is exceeded by the sum of the deductions properly allocated and apportioned thereto. Such losses are to be determined separately in accordance with the principles of the separate limitations. Accordingly, income and deductions subject to a separate limitation are not to be netted with income and deductions subject to another separate limitation for purposes of determining the amount of an overall foreign loss. A taxpayer may, for example, have an overall foreign loss under the general limitation in the same taxable year in which it has taxable income under the DISC dividend limitation. The same principles of calculating overall foreign losses on a separate limitation basis apply for taxable years beginning before January 1, 1983, except that a taxpayer shall determine its overall foreign losses on a combined basis, except for income subject to the FORI limitation, if the taxpayer filed its pre-1983 returns on such basis. Thus, for taxable years beginning prior to January 1, 1983, a taxpayer can net income and losses among the passive interest limitation, the DISC dividend limitation, and the general limitation if the taxpayer calculated its overall foreign losses that way at the time. Taxpayers that computed overall foreign losses separately under each of the separate limitations on their returns filed for taxable years beginning prior to January 1, 1983, may not amend such returns to compute their overall foreign losses for pre-1983 years on a combined basis.

(2) *Separate limitation defined.* For purposes of paragraph (c)(1) of this section and these regulations, the term separate limitation means any of the separate limitations under former section 904(d)(1)(A) (passive interest limitation), (B) (DISC dividend

limitation), (C) (foreign trade income limitation), (D) (FSC distributions limitation), and (E) (general limitation) and the separate limitation under section 907(b) (FORI limitation) (for taxable years ending after December 31, 1975, and beginning before January 1, 1983).

(3) *Method of allocation and apportionment of deductions.* In determining its overall foreign loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to the appropriate category of gross income in accordance with section 862(b) and § 1.861-8 of the regulations. However, the following deductions shall not be taken into account:

(i) The amount of any net operating loss deduction for such year under section 172(a); and

(ii) To the extent such losses are not compensated for by insurance or otherwise, the amount of any—

(A) Expropriation losses for such year (as defined in section 172(h)), or

(B) Losses for such year which arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) *Additions to the overall foreign loss account—(1) General rule.* A taxpayer's overall foreign loss as determined under paragraph (c) of this section shall be added to the applicable overall foreign loss account at the end of its taxable year to the extent that the overall foreign loss has reduced United States source income during the taxable year or during a year to which the loss has been carried back. For rules with respect to carryovers see paragraph (d)(4) of this section and § 1.904(f)-3.

(2) *Overall foreign net capital loss.* An overall foreign net capital loss shall be added to the applicable overall foreign loss account at the end of the taxable year to the extent that the foreign source capital loss has reduced United States source capital gain net income during the taxable year or during a year to which the loss has been carried back, subject to the adjustments in paragraph (d)(5) of this section. For rules with respect to carryovers, see paragraph (d)(4) of this section and § 1.904(f)-3. As provided under section 1211(b), to the extent that a foreign source net capital loss has reduced United States source income other than United States source capital gain net income, this additional amount would be added to the taxpayer's overall foreign loss account as if the United States source income had been offset by a foreign net operating loss that is not a capital loss.

(3) *Overall foreign losses of another taxpayer.* If any portion of any overall foreign loss of another taxpayer is

allocated to the taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses), the taxpayer shall add such amount to its applicable overall foreign loss account.

(4) *Additions to overall foreign loss account created by loss carryovers.* Subject to the adjustments under § 1.904(f)-1(d)(5), the taxpayer shall add to each overall foreign loss account—

(i) All net operating loss carryovers to the current taxable year attributable to the same limitation to the extent that overall foreign losses included in the net operating loss carryovers reduced United States source income for the taxable year, and

(ii) All capital loss carryovers to the current taxable year attributable to the same limitation to the extent that foreign source capital loss carryovers reduced United States source capital gain net income for the taxable year.

(5) *Adjustments.* The amount of overall foreign loss determined in paragraph (d)(1) of this section and the amount of overall foreign net capital loss determined in paragraph (d)(2) of this section which shall be added to a taxpayer's overall foreign loss account shall be adjusted as follows prior to being added to an account.

(i) *Adjustment due to reduction in foreign source income under section 904(b).* A taxpayer's overall foreign loss account shall not include any net capital loss from sources without the United States to the extent that the application of section 904(b) would result in a reduction of foreign source taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction.

(ii) *Adjustment to account for rate differential between ordinary income rate and capital gain rate.* Subject to the provisions of paragraph (d)(5)(i) of this section, if an overall foreign loss for a taxable year includes an overall foreign net capital loss, such amount shall be reduced as follows, in accordance with the provisions of section 904(b), before being added to the overall foreign loss account:

(A) In the case of a corporate taxpayer, to the extent that the United States source capital gain net income reduced by the foreign source net capital loss consists of United States source net capital gain, by an amount equal to the rate differential portion (as defined in section 904(b)(3)(D) of the Code and the regulations thereunder) of the United States source net capital gain; or

(B) In the case of a taxpayer other than a corporate taxpayer, for taxable years beginning prior to January 1, 1979,

an amount equal to the taxpayer's United States source net capital gain that is offset by such foreign source net capital loss reduced by 50 percent of such gain, and for taxable years beginning after December 31, 1978, and before January 1, 1987, reduced by an amount equal to 60 percent of such gain.

(e) *Reductions of overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall foreign loss account is reduced by the amount of any overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* An overall foreign loss account is reduced by the amount of any foreign source income that is subject to the same limitation as the loss that resulted in the account and that is recaptured in accordance with § 1.904(f)-2 (c) (relating to recapture under section 904(f)(1)); 1.904(f)-2 (d) (relating to recapture when the taxpayer disposes of certain properties under section 904(f)(3)); and 1.904(f)-4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section are illustrated by the following examples.

*Example (1).* X Corporation is a domestic corporation with foreign branch operations in country C. X's taxable income and losses for its taxable year 1983 are as follows:

U.S. Source taxable income.....	\$1,000
Foreign source taxable income (loss) subject to the general limitation.....	(\$500)
Foreign source taxable income subject to the passive interest limitation.....	\$200

X has a general limitation overall foreign loss of \$500 for 1983 in accordance with paragraph (c)(1) of this section. Since the general limitation overall foreign loss is not considered to offset income under the separate limitation for passive interest income, it therefore offsets \$500 of United States source taxable income. This amount is added to X's general limitation overall foreign loss account at the end of 1983 in accordance with paragraphs (c) (1) and (d) (1) of this section.

*Example (2).* Y Corporation is a domestic corporation with foreign branch operations in Country C. Y's taxable income and losses for its taxable year 1982 are as follows:

U.S. source taxable income.....	\$1,000
Foreign source taxable income subject to the general limitation.....	(\$500)

Foreign source taxable income subject to the passive interest limitation..... \$250

For its pre-1983 taxable years, Y filed its returns determining its overall foreign losses on a combined basis. In accordance with paragraphs (a) and (c) (1) of this section, Y may net the foreign source income and loss before offsetting the United States source income. Y therefore has a section 904(d)(1)(A-C) overall foreign loss account of \$250 at the end of 1982.

*Example (3).* X Corporation is a domestic corporation with foreign branch operations in country C. For its taxable year 1985, X has taxable income (loss) determined as follows:

U.S. source taxable income.....	\$200
Foreign source taxable income (loss) subject to the general limitation.....	(\$1,000)
Foreign source taxable income (loss) subject to the passive interest limitation.....	\$1,800

X has a general limitation overall foreign loss of \$1,000 in accordance with paragraph (c)(1) of this section. The overall foreign loss offsets \$200 of United States source taxable income in 1985 and, therefore, X has a \$200 general limitation overall foreign loss account at the end of 1985. The remaining \$800 general limitation loss is offset by the passive interest limitation income 1985 so that X has no net operating loss carryover that is attributable to the general limitation loss and no additional amount attributable to that loss will be added to the overall foreign loss account in 1985 or in any other year.

*Example (4).* In 1986, V Corporation has \$1,000 of general limitation foreign source taxable income and \$500 of general limitation foreign source net capital loss which has reduced \$500 of United States source capital gain net income ("short term gain") (none of which is net capital gain). Under section 904(b), the numerator of V's foreign tax credit limitation fraction for income subject to the general limitation is reduced by \$500 (see § 1.904 (b)-1 (a)(3)). Under paragraph (d)(5)(i) of this section, none of that \$500 goes into its general limitation overall foreign loss account.

*Example (5).* Z Corporation is a domestic corporation with foreign branch operations. For the taxable year 1984, Z's taxable income and (losses) are as follows:

U.S. source taxable ordinary income.....	\$1,000
U.S. source net capital gain.....	\$460
Foreign source taxable ordinary income subject to the general limitation.....	\$200
Foreign source net capital loss subject to the general limitation.....	(\$300)

Z had no capital gain net income in any prior taxable year. Under paragraph (d)(2) and (5) of this section, the amount to be added to Z's general limitation overall foreign loss account is the excess of the amount which has reduced United States source capital gain net income for the taxable year (\$460), adjusted for the rate differential because it has reduced United States source net capital gain ( $\$460 \times 28/46 = \$280$ ), over the amount which has reduced the numerator of Z's foreign tax credit limitation fraction under section 904(b)(2), which is \$200. (The \$200 amount is foreign source net capital loss that has reduced United States source net

capital gain in the denominator of the fraction, but not exceeding the amount of foreign source income in the numerator before the section 904(b)(2) adjustment.) Thus, Z must add \$80 (the excess of the \$280 over \$200) to its general limitation overall foreign loss account in 1984.

#### § 1.904(f)-2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer shall be required to recapture an overall foreign loss as provided in this section. Recapture is accomplished by treating as United States source income a portion of the taxpayer's foreign source taxable income of the same limitation as the foreign source loss that resulted in an overall foreign loss account. As a result, if the taxpayer elects the benefits of section 901 or section 936, the taxpayer's foreign tax credit limitation with respect to such income is decreased. As provided in § 1.904 (f)-1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture continues until such time as the amount of foreign source taxable income recharacterized as United States source income equals the amount in the overall foreign loss account. As provided in § 1.904 (f)-1(e)(2), the balance in a overall foreign loss account is reduced at the end of each taxable year by the amount of the loss recaptured during that taxable year. Regardless of whether recapture occurs in a year in which a taxpayer elects the benefits of section 901 or in a year in which a taxpayer deducts its foreign taxes under section 164, the overall foreign loss account is recaptured only to the extent of foreign source taxable income remaining after applying the appropriate section 904(b) adjustments, if any, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture—(1) In general.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States shall be computed with respect to each of the separate limitations described in § 1.904 (f)-1(c)(2) in accordance with the rules set forth in § 1.904 (f)-1(c) (1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to other separate limitations. Before applying the recapture rules to foreign source taxable income, the following provisions shall be applied to such income in the following order:

(i) Former section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and the regulations thereunder shall be applied to treat certain foreign source gain as United States source gain; and

(ii) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax credit limitation fraction for certain capital gains and losses.

(c) *Section 904(f)(1) recapture—(1) In general.* In a year in which a taxpayer elects the benefits of sections 901 or 936, the amount of any foreign source taxable income subject to recapture in a taxable year in which paragraph (a) of this section is applicable is the lesser of the balance in the applicable overall foreign loss account (after reduction of such account in accordance with § 1.904 (f)-1(e)) or fifty percent of the taxpayer's foreign source taxable income of the same limitation as the loss that resulted in the overall foreign loss account (as determined under paragraph (b) of this section). If, in any year, in accordance with sections 164(a) and section 275(a)(4)(A), a taxpayer deducts rather than credits its foreign taxes, recapture is applied to the extent of the lesser of (i) the balance in the applicable overall foreign loss account or (ii) foreign source taxable income of the same limitation type that resulted in the overall foreign loss minus foreign taxes imposed on such income.

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* In a year in which a taxpayer elects the benefits of sections 901 or 936, a taxpayer may make an annual revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend a prior election by attaching a statement to its annual Form 1116 or 1118. If an amendment is made to a prior year's election, an amended tax return should be filed. The statement attached to the Form 1116 or 1118 must indicate the percentage and dollar amount of the taxpayer's foreign source taxable income that is being recharacterized as United States source income and the percentage and dollar amount of the balance (both before and after recapture) in the overall foreign loss account that is being recaptured. Except for the special recapture rules for section 936 corporations and for recapture of pre-1983 overall foreign losses determined on a combined basis, the taxpayer that elects to credit its foreign taxes may not elect to recapture an amount in excess of the taxpayer's

foreign source taxable income subject to the same limitation as the loss that resulted in the overall foreign loss account.

(3) *Special rule for recapture of losses incurred prior to section 936 election.* If a corporation elects the application of section 936 and at the time of the election has a balance in any overall foreign loss account, such losses will be recaptured from the possessions source income of the electing section 936 corporation that qualifies for the section 936 credit, including qualified possession source investment income as defined in section 936(d)(2), even though the overall foreign loss to be recaptured may not be attributable to a loss in an income category of a type that would meet the definition of qualified possession source investment income. For purposes of recapturing an overall foreign loss incurred by a consolidated group including a corporation that subsequently elects to use section 936, the electing section 936 corporation's possession source income that qualifies for the section 936 credit, including qualified possession source investment income, shall be used to recapture the section 936 corporation's share of previously incurred overall foreign loss accounts. Rules for determining the section 936 corporation's share of the consolidated groups overall foreign loss accounts are provided in § 1.1502-9(c).

(4) *Recapture of pre-1983 overall foreign losses determined on a combined basis.* If a taxpayer computed its overall foreign losses on a combined basis in accordance with § 1.904(f)-1(c)(1) for taxable years beginning before January 1, 1983, any losses recaptured in taxable years beginning after December 31, 1982, shall be recaptured from income subject to the general limitation, subject to the rules in § 1.904(f)-6 (a) and (b). Ordering rules for recapture of these losses are provided in § 1.904(f)-6(c).

(5) *Illustrations.* The rules of this paragraph (c) are illustrated by the following examples, all of which assume a United States corporate tax rate of 50 percent unless otherwise stated.

*Example (1)* X Corporation is a domestic corporation that does business in the United States and abroad. On December 31, 1983, the balance in X's general limitation overall foreign loss account is \$600, all of which is attributable to a loss incurred in 1983. For 1984, X has United States source taxable income of \$500 and foreign source taxable income subject to the general limitation of \$500. For 1984, X pays \$200 in foreign taxes and elects section 901. Under paragraph (c)(1) of this section, X is required to recapture \$250 (the lesser of \$600 or 50 percent of \$500) of its overall foreign loss. As a consequence, X's

foreign tax credit limitation under the general limitation is  $\$250/\$1,000 \times \$500$ , or  $\$125$ , instead of  $\$500/\$1,000 \times \$500$ , or  $\$250$ . The balance in X's general limitation overall foreign loss account is reduced by  $\$250$  in accordance with § 1.904(f)-1(e)(2).

**Example (2).** The facts are the same as in example (1) except that X makes an election to recapture its overall foreign loss to the extent of 80 percent of its foreign source taxable income subject to the general limitation (or  $\$400$ ) in accordance with paragraph (c)(2) of this section. As a result of recapture, X's 1984 foreign tax credit limitation for income subject to the general limitation is  $\$100/\$1,000 \times \$500$ , or  $\$50$ , instead of  $\$500/\$1,000 \times \$500$ , or  $\$250$ . X's general limitation overall foreign loss account is reduced by  $\$400$  in accordance with § 1.904(f)-1(e)(2).

**Example (3).** The facts are the same as in example (1) except that X does not elect the benefits of section 901 in 1984 and instead deducts its foreign taxes paid. In 1984, X recaptures  $\$300$  of its overall foreign loss, the difference between X's foreign source taxable income of  $\$500$  and  $\$200$  of foreign taxes paid. The balance in X's general limitation overall foreign loss account is reduced by  $\$300$  in accordance with § 1.904(f)-1(e)(2).

**Example (4).** The facts are the same as in example (1) except that in 1984, X also has  $\$1,000$  of foreign source DISC dividend income subject to the separate limitation for DISC dividends which carries a foreign tax of  $\$50$ . Under paragraph (c)(1) of this section the amount of X's general limitation overall foreign loss subject to recapture is  $\$250$  (the lesser of the balance in the overall foreign loss account or 50 percent of the foreign source taxable income subject to the general limitation). There is no recapture with respect to the DISC dividend income. X's separate limitation for DISC dividend income is  $\$1,000/\$2,000 \times \$1,000$ , or  $\$500$ . Its general limitation is  $\$250/\$2,000 \times \$1,000$ , or  $\$125$ , instead of  $\$500/\$2,000 \times \$1,000$ , or  $\$250$ . The balance in X's general limitation overall foreign loss account is reduced by  $\$250$  in accordance with § 1.904(f)-1(e)(2).

**Example (5).** On December 31, 1980, V, a domestic corporation that does business in the United States and abroad, has a balance in its section 904(d)(1)(A-C) overall foreign loss account of  $\$600$ . V also has a balance in its FORI limitation overall foreign loss account of  $\$900$ . For 1981, V has foreign source taxable income subject to the general limitation of  $\$500$  and  $\$500$  of United States source income. V also has foreign source taxable income subject to the FORI limitation of  $\$800$ . V is required to recapture  $\$250$  of its section 904(d)(1)(A-C) overall foreign loss account (the lesser of  $\$600$  or 50% of  $\$500$ ) and its general limitation foreign tax credit limitation is  $\$250/\$1,800 \times \$900$ , or  $\$125$  instead of  $\$500/\$1,800 \times \$900$ , or  $\$250$ . V is also required to recapture  $\$400$  of its FORI limitation overall foreign loss account (the lesser of  $\$900$  or 50% of  $\$800$ ). V's foreign tax credit limitation for FORI is  $\$400/\$1,800 \times \$900$ , or  $\$200$ , instead of  $\$800/\$1,800 \times \$900$ , or  $\$400$ . The balance in V's FORI limitation overall foreign loss account is reduced to  $\$500$  and the balance in V's section 904(d)(1)(A-C) account is reduced to  $\$350$ , in accordance with § 1.904(f)-1(e)(2).

**Example (6).** This example assumes a United States corporate tax rate of 46 percent (under section 11(b)) and an alternative rate of tax under section 1201(a) of 28 percent. W is a domestic corporation that does business in the United States and abroad. On December 31, 1984, W has  $\$350$  in its general limitation overall foreign loss account. For 1985, W has  $\$500$  of United States source taxable income, and has foreign source income subject to the general limitation as follows:

Foreign source taxable income other than net capital gain .....	\$720
Foreign source net capital gain .....	\$460

Under paragraph (b)(2) of this section, foreign source taxable income for purposes of recapture includes foreign source capital gain net income, reduced, under section 904(b)(2), by the rate differential portion of foreign source net capital gain, which adjusts for the reduced tax rate for net capital gain under section 1201(a):

Foreign source capital gain net income ..	\$460
Rate differential portion of foreign source net capital gain (18/46 of \$460) .....	-180
Foreign source capital gain included in foreign source taxable income .....	\$280

The total foreign source taxable income of W for purposes of recapture in 1985 is  $\$1,000$  ( $\$720 + \$280$ ). Under paragraph (c)(1) of this section, W is required to recapture  $\$350$  (the lesser of  $\$350$  or 50 percent of  $\$1,000$ ), and W's general limitation overall foreign loss account is reduced to zero. W's foreign tax credit limitation for income subject to the general limitation is  $\$650/\$1,500 \times \$690$  ( $[(.46)(500 + 720) + (.28)(460)]$ ), or  $\$299$ , instead of  $\$1,000/\$1,500 \times \$690$ , or  $\$460$ .

**(d) Recapture of overall foreign losses from dispositions under section 904(f)(3)—(1) In general.** If a taxpayer disposes of property used or held for use predominantly without the United States in a trade or business during a taxable year and that property generates foreign source taxable income subject to a separate limitation to which paragraph (a) of this section is applicable, (i) gain will be recognized on the disposition of such property, (ii) such gain will be treated as foreign source income subject to the same limitation as the income the property generated, and (iii) the applicable overall foreign loss account shall be recaptured as provided in paragraphs (d)(2), (d)(3), and (d)(4) of this section. See paragraph (d)(5) of this section for definitions.

**(2) Treatment of net capital gain.** If the gain from a disposition of property to which this paragraph (d) applies is treated as net capital gain, all references to such gain in paragraphs (d)(3) and (d)(4) of this section shall mean such

gain as adjusted under paragraph (b) of this section. The amount by which the overall foreign loss account shall be reduced shall be determined from such adjusted gain.

**(3) Dispositions where gain is recognized irrespective of section 904(f)(3).** If a taxpayer recognizes foreign source gain subject to a separate limitation on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in a taxpayer's overall foreign loss account that is attributable to a loss under such limitation after applying paragraph (c) of this section, an additional portion of such balance shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount recaptured shall be the lesser of such balance or 100 percent of the foreign source gain recognized on the disposition that was not previously recharacterized.

**(4) Dispositions in which gain would not otherwise be recognized—(1) Recognition of gain to the extent of the overall foreign loss account.** If a taxpayer makes a disposition of property described in paragraph (d)(1) of this section in which any amount of gain otherwise would not be recognized in the year of the disposition, and such property was used or held for use to generate foreign source taxable income subject to a separate limitation under which the taxpayer had a balance in its overall foreign loss account (including a balance that arose in the year of the disposition), the taxpayer shall recognize foreign source taxable income in an amount equal to the lesser of:

**(A)** The sum of the balance in the applicable overall foreign loss account (but only after such balance has been increased by amounts added to the account for the year of the disposition or has been reduced by amounts recaptured for the year of the disposition under paragraph (c) and paragraph (d)(3) of this section) plus the amount of any overall foreign loss that would be part of a net operating loss for the year of the disposition if gain from the disposition were not recognized under section 904(f)(3), plus the amount of any overall foreign loss that is part of a net operating loss carryover from a prior year, or

**(B)** The excess of the fair market value of such property over the taxpayer's adjusted basis in such property.

The excess of the fair market value of such property over its adjusted basis shall be determined on an asset by asset basis. Losses from the disposition of an asset shall not be recognized. Any foreign source taxable income deemed received and recognized under this

paragraph (d)(4)(i) will have the same character as if the property had been sold or exchanged in a taxable transaction and will constitute gain for all purposes.

(ii) *Basis adjustment.* The basis of the property received in an exchange to which this paragraph (d)(4) applies shall be increased by the amount of gain deemed recognized, in accordance with applicable sections of subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), O (relating to gain or loss on the disposition of property), and P (relating to capital gains and losses). If the property to which this paragraph (d)(4) applies was transferred by gift, the basis of such property in the hands of the donor immediately preceding such gift shall be increased by the amount of the gain deemed recognized.

(iii) *Recapture of overall foreign loss to the extent of amount recognized.* The provisions of paragraphs (a) and (b) of this section shall be applied to the extent of 100 percent of the foreign source taxable income which is recognized under paragraph (d)(4)(i) of this section. However, amounts of foreign source gain that would not be recognized except by application of section 904(f)(3) and paragraph (d)(4)(i) of this section, and which are treated as United States source gain by application of section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and paragraph (b)(1) of this section, shall reduce the overall foreign loss account (subject to the adjustments described in paragraph (d)(2) of this section) if such gain is net capital gain, notwithstanding the fact that such amounts would otherwise not be recaptured under the ordering rules in paragraph (b) of this section.

(iv) *Priorities among dispositions in which gain is deemed to be recognized.* If, in a single taxable year, a taxpayer makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of this paragraph (d)(4) shall be applied to each disposition in succession starting with the disposition which occurred earliest, until the balance in the applicable overall foreign loss account is reduced to zero. If the taxpayer simultaneously makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of paragraph (d)(4) shall be applied so that the balance in the applicable overall foreign loss account to be recaptured will be allocated pro rata among the assets in proportion to the excess of the fair market value of each asset over the adjusted basis of each asset.

(5) *Definitions.*—(i) *Disposition.* A disposition to which this paragraph (d) applies includes a sale; exchange; distribution; gift; transfer upon the foreclosure of a security interest (but not a mere transfer of title to a creditor upon creation of a security interest or to a debtor upon termination of a security interest); involuntary conversion; contribution to a partnership, trust, or corporation; transfer at death; or any other transfer of property whether or not gain or loss is recognized under other provisions of the Code. However, a disposition to which this paragraph (d) applies does not include:

(A) A distribution or transfer of property to a domestic corporation described in section 381 (a) (provided that paragraph (d)(6) of this section (d)(5)(iv) of this section);

(B) A disposition of property which is not a material factor in the realization of income by the taxpayer (as defined in paragraph (d)(5)(iv) of this section);

(C) A transaction in which gross income is not realized; or

(D) The entering into of a unitization or pooling agreement (as defined in § 1.614-8(b)(6) of the regulations) containing a valid election under section 761(a)(2), and in which the source of the entire gain from any disposition of the interest created by the agreement would be determined to be foreign source under section 862(a)(5) if the disposition occurred presently.

(ii) *Property used in a trade or business.* Property is used in a trade or business if it is held for the principal purpose of promoting the present or future conduct of the trade or business. This generally includes property acquired and held in the ordinary course of a trade or business or otherwise held in a direct relationship to a trade or business. In determining whether an asset is held in a direct relationship to a trade or business, principal consideration shall be given to whether the asset is used in the trade or business. Property will be treated as held in a direct relationship to a trade or business if the property was acquired with funds generated by that trade or business or if income generated from the asset is available for use in that trade or business. Property used in a trade or business may be tangible or intangible, real or personal property. It includes property, such as equipment, which is subject to an allowance for depreciation under section 167 or cost recovery under section 168. Property may be considered used in a trade or business even if it is a capital asset in the hands of the taxpayer. However, stock of another corporation shall not be considered

property used in a trade or business if a substantial investment motive exists for acquiring and holding the stock. On the other hand, stock acquired or held to assure a source of supply for a trade or business shall be considered property used in that trade or business. Inventory is generally not considered property used in a trade or business. However, when disposed of in a manner not in the ordinary course of a trade or business, inventory will be considered property used in the trade or business. A partnership interest will be treated as property used in a trade or business if the underlying assets of the partnership would be property used in a trade or business. For purposes of section 904(f)(3) and § 1.904(f)-2 (d) (1) and (5), a disposition of a partnership interest to which this section applies will be treated as a disposition of a proportionate share of each of the assets of the partnership. For purposes of allocating the purchase price of the interest and the seller's basis in the interest to those assets, the principles of § 1.751-1(a) will apply.

(iii) *Property used predominantly outside the United States.* Property will be considered used predominantly outside the United States if for a 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business) such property was located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States if, during the 3-year (or shorter) period, either such property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of such property are traversed outside the United States.

(iv) *Property which is a material factor in the realization of income.* For purposes of this section, property used in a trade or business will be considered a material factor in the realization of income unless the taxpayer establishes that it is not (or, if the taxpayer did not realize income from the trade or business in the taxable year, would not be expected to be) necessary to the realization of income by the taxpayer.

(6) *Carryover of overall foreign loss accounts in a corporate acquisition to which section 381(a) applies.* In the case of a distribution or transfer described in section 381(a), an overall foreign loss account of the distributing or transferor corporation shall be treated as an

overall foreign loss account of the acquiring or transferee corporation as of the close of the date of the distribution or transfer. If the transferee corporation had an overall foreign loss account under the same separate limitation prior to the distribution or transfer, the balance in the transferor's account must be added to the transferee's account. If not, the transferee must adopt the transferor's overall foreign loss account. An overall foreign loss of the transferor will be treated as incurred by the transferee in the year prior to the year of the transfer.

(7) *Illustrations.* The rules of this paragraph (d) are illustrated by the following examples which assume that the United States corporate tax rate is 50 percent (unless otherwise stated). For purposes of these examples, none of the foreign source gains are treated as net capital gains (unless so stated).

*Example (1).* X Corporation has a balance in its general limitation overall foreign loss account of \$600 at the close of its taxable year ending December 31, 1984. In 1985, X sells assets used predominantly outside the United States in a trade or business and recognizes \$1,000 of gain on the sale under section 1001. This gain is subject to the general limitation. This sale is a disposition within the meaning of paragraph (d)(5)(i) of this section, and to which this paragraph (d) applies. X has no other foreign source taxable income in 1985 and has \$1,000 of United States source taxable income. Under paragraph (c), X is required to recapture \$500 (the lesser of the balance in X's general limitation overall foreign loss account (\$600) or 50 percent of \$1,000) of its overall foreign loss account. The balance in X's general limitation overall foreign loss account is reduced to \$100 in accordance with § 1.904(f)-1(e)(2). In addition, under paragraph (d)(3) of this section, X is required to recapture \$100 (the lesser of the remaining balance in its general limitation overall foreign loss account (\$100) or 100 percent of its foreign source taxable income recognized on such disposition that has not been previously recharacterized (\$500)). The total amount recaptured is \$600. X's foreign tax credit limitation for income subject to the general limitation in 1985 is \$200 (\$400/\$2,000 × \$1,000) instead of \$500 (\$1,000/\$2,000 × \$1,000). The balance in X's general limitation overall foreign loss account is reduced to zero in accordance with § 1.904(f)-1(e)(2).

*Example (2).* On December 31, 1984, Y Corporation has a balance in its general limitation overall foreign loss account of \$1,500. In 1985, Y has \$500 of United States source taxable income and \$200 of foreign source taxable income subject to the general limitation. Y's foreign source taxable income is from the sale of property used predominantly outside the United States in a trade or business. This sale is a disposition to which this paragraph (d) is applicable. In 1985, Y also transferred property used predominantly outside of the United States in a trade or business to another corporation.

Under section 351, no gain was recognized on this transfer. Such property had been used to generate foreign source taxable income subject to the general limitation. The excess of the fair market value of the property transferred over Y's adjusted basis in such property was \$2,000. In accordance with paragraph (c) of this section, Y is required to recapture \$100 (the lesser of \$1,500, the amount in Y's general limitation overall foreign loss account, or 50 percent of \$200, the amount of general limitation foreign source taxable income for the current year) of its general limitation overall foreign loss. Y is then required to recapture an additional \$100 of its general limitation overall foreign loss account under paragraph (d)(3) of this section out of the remaining gain recognized on the sale of assets, because 100 percent of such gain is subject to recapture. The balance in Y's general limitation overall foreign loss account is reduced to \$1,300 in accordance with § 1.904(f)-1(e)(2). Y corporation is then required to recognize \$1,300 of foreign source taxable income on its section 351 transfer under paragraph (d)(4) of this section. The remaining \$700 of potential gain associated with the section 351 transfer is not recognized. Under paragraph (d)(4), 100 percent of the \$1,300 is recharacterized as United States source taxable income, and Y's general limitation overall foreign loss account is reduced to zero. Y's entire taxable income for 1985 is:

U.S. source taxable income.....	\$500
Foreign source taxable income subject to the general limitation that is recharacterized as U.S. source income by paragraphs (c) and (d)(3) of this section.....	200
Gain recognized under section 904(f)(3) and paragraph (d)(4) of this section, and recharacterized as U.S. source income.....	1,300
<b>Total.....</b>	<b>\$2,000</b>

Y's foreign tax credit limitation for 1985 for income subject to the general limitation is \$0 (\$0/\$2,000 × \$1,000) instead of \$100 (\$200/\$700 × \$350).

*Example (3).* W Corporation is a calendar year domestic corporation with foreign branch operations in country C. As of December 31, 1984, W has no overall foreign loss accounts and has no net operating loss carryovers. W's entire taxable income in 1985 is:

U.S. source taxable income.....	\$800
Foreign source taxable income (loss) subject to the general limitation.....	(\$1,000)

W cannot carry back its 1985 NOL to any earlier year. As of December 31, 1985, W therefore has \$800 in its general limitation overall foreign loss account. In 1986, W earns \$400 United States source taxable income and has an additional \$1,000 loss from the operations of the foreign branch. Income in the loss category would be subject to the general limitation. Also in 1986, W disposes of property used predominately outside the United States in a trade or business. Such property generated income subject to the general limitation. The excess of the property's fair market value over its adjusted

basis is \$3,000. The disposition is of a type described in § 1.904(f)-2(d)(4)(i). W has no other income in 1986. Under § 1.904(f)-2(d)(4)(i), W is required to recognize foreign source taxable income on the disposition in an amount equal to the lesser of \$2,000 (\$800 (the balance in the general limitation overall foreign loss account as of 1985) + \$400 (the increase in the general limitation overall foreign loss account attributable to the disposition year) + \$600 (the general limitation overall foreign loss that is part of the NOL from 1986) + \$200 (the general limitation overall foreign loss that is part of the NOL from 1985)) or \$3,000. The \$2,000 foreign source income required to be recognized under section 904(f)(3) is reduced to \$1,200 by the remaining \$600 loss in 1986 and the \$200 net operating loss carried forward from 1985. This \$1,200 of income is subject to the general limitation. In computing foreign tax credit limitation for general limitation income, the \$1,200 of foreign source income is treated as United States source income and, therefore, W's foreign tax credit limitation for income subject to the general limitation is zero. W's overall foreign loss account is reduced to zero.

*Example (4).* Z Corporation has a balance in its FORI overall foreign loss account of \$1,500 at the end of its taxable year 1980. In 1981, Z has \$1,600 of foreign oil related income subject to the separate limitation for FORI income and no United States source income. In addition, in 1981, Z makes two dispositions of property used predominantly outside the United States in a trade or business on which no gain was recognized. Such property generated foreign oil related income. The excess of the fair market value of the property transferred in the first disposition over Z's adjusted basis in such property is \$575. The excess of the fair market value of the property transferred in the second disposition over Z's adjusted basis in such property is \$1,000. Under paragraph (c) of this section, Z is required to recapture \$800 (the lesser of 50 percent of its foreign oil related income of \$1,600 or the balance (\$1,500) in its FORI overall foreign loss account) of its foreign oil related loss. In accordance with paragraphs (d)(4)(i) and (iv) of this section, Z is required to recognize foreign oil related income in the amount of \$575 on the first disposition and, since the foreign oil related loss account is now reduced by \$1,375 (the \$800 and \$575 amounts previously recaptured), Z is required to recognize foreign oil related income in the amount of \$125 on the second disposition. In accordance with paragraph (d)(4)(iii) of this section, the entire amount recognized is treated as United States source income and the balance in the FORI overall foreign loss account is reduced to zero under § 1.904(f)-1(e)(2). Z's foreign tax credit limitation for FORI is \$400 (\$800/\$2,300 × \$1,150) instead of \$800 (\$1,600/\$1,600 × \$800).

*Example (5).* The facts are the same as in example (4), except that the gain from the two dispositions of property is treated as net capital gain and the United States corporate tax rate is assumed to be 46 percent. As in example (4), Z is required to recapture \$800 of its foreign oil related loss from its 1981

ordinary foreign oil related income. In accordance with paragraph (d)(4)(i) and (iv) of this section, Z is first required to recognize foreign oil related income (which is net capital gain) on the first disposition in the amount of \$575. Under paragraphs (b) and (d)(2) of this section, this net capital gain is adjusted by subtracting the rate differential portion of such gain from the total amount of such gain to determine the amount by which the foreign oil related loss account is reduced, which is \$350 (\$575 - (\$575 × 18/46)). The balance remaining in Z's foreign oil related loss account after this step is \$350. Therefore, this process will be repeated, in accordance with paragraph (d)(4)(iv) of this section, to recapture that remaining balance out of the gain deemed recognized on the second disposition, resulting in reduction of the foreign oil related loss account to zero and net capital gain required to be recognized from the second disposition in the amount of \$575, which must also be adjusted by subtracting the rate differential portion to determine the amount by which the foreign oil related loss account is reduced (which is \$350). The \$575 of net capital gain from each disposition is recharacterized as United States source net capital gain. Z's section 907 (b) foreign tax credit limitation is the same as in example (4), and Z has \$1,150 (\$575 + \$575) of United States source net capital gain.

**§ 1.904(f)-3 Allocation of net operating losses and net capital losses.**

(a) *Allocation of net operating loss carrybacks and carryovers that include overall foreign losses.* If a taxpayer sustains an overall foreign loss that is part of a net operating loss for the year, then, in carrying such net operating loss back to an earlier year or forward to a later year in accordance with section 172 (or §§ 1.1502-21(b) and 1.1502-79 (a)), the portion, if any, of the net operating loss attributable to a United States source loss shall be allocated first to United States source income and the portion of the net operating loss attributable to an overall foreign loss shall be allocated first to foreign source taxable income subject to the same separate limitation in the carryback or carryover year. To the extent that the overall foreign loss component of the net operating loss exceeds foreign source taxable income subject to the same separate limitation in the year to which it is carried, it shall be allocated next to the taxpayer's United States source income for such year and then to foreign source taxable income subject to another separate limitation. See paragraph § 1.904(f)-1(d) of this section for additions to the applicable overall foreign loss account to the extent that the United States source taxable income is reduced in the taxable year to which the loss is carried.

(b) *Allocation of net capital loss carrybacks and carryovers that include overall foreign losses.* If a taxpayer

sustains an overall foreign loss that is part of a new capital loss for the year, then in carrying the net capital loss back to an earlier year or forward to a later year in accordance with section 1212 (or §§ 1.1502-22 and 1.1502-79(b)), the portion of the net capital loss that is attributable to a foreign source capital loss shall be allocated first to foreign source capital gain net income subject to the same separate limitation in the carryback or carryover year. To the extent that such foreign source capital loss exceeds foreign source capital gain net income subject to the same separate limitation in the year to which it is carried, it shall be allocated first to United States source capital gain net income in such year and then to foreign source capital gain net income subject to another separate limitation. An overall foreign source net capital loss carried over to a later year in accordance with this paragraph (b) shall be taken into consideration in determining the taxpayer's overall foreign loss in the year to which it is carried and shall be added to the applicable overall foreign loss account for such year in accordance with paragraph (c) of this section. An overall foreign source net capital loss carried back to an earlier year in accordance with this paragraph (b) shall be added to the applicable overall foreign loss account in the year in which the loss occurred.

(c) *Transitional rule.* When a taxpayer incurs a net operating loss in a post-1982 taxable year that is carried back to a pre-1983 taxable year and creates an overall foreign loss in the pre-1983 year, for purposes of this section, § 1.904(f)-1(c)(1), and § 1.904(f)-2(b), that loss will be treated as if it arose in the post-1982 year; thus the loss will first offset United States source income before it offsets foreign source income subject to another limitation. When a taxpayer incurs a net operating loss in a pre-1983 taxable year that is carried forward to a post-1982 taxable year and creates an overall foreign loss in the carryover year, for purposes of this section, § 1.904(f)-1(c)(1), and § 1.904(f)-2(b), that loss is treated as if it arose in the post-1982 taxable year; thus the loss will first offset United States source income before it offsets foreign source income subject to another limitation.

(d) *Illustrations.* The following examples illustrate the application of this section.

*Example (1).* X Corporation is a domestic corporation with foreign branch operations in Country C. For its taxable year 1985, X has a net operating loss of (\$1250), determined as follows:

U.S. source taxable income (loss).....(\$250)  
Foreign source taxable income (loss)

subject to the general limitation.....(\$1,000)

The only prior year to which the net operating loss can be carried under section 172 is 1983. For its taxable year 1983, X had the following taxable income:

U.S. source taxable income.....\$1,900  
Foreign source taxable income subject to the general limitation.....\$400

X has a general limitation overall foreign loss for 1985 of \$1,000. X's overall foreign loss is part of a net operating loss of \$1,250 for 1985. In accordance with § 1.904(f)-3(a), the foreign loss carried back to 1983 is first allocated to X's foreign source taxable income subject to the limitation under which the loss arose, the general limitation. This amount is not added to X's overall foreign loss account under paragraph (c)(1)(i). The remaining \$800 of 1985 foreign source loss is allocated to and thus reduces 1983 United States source income, and this amount is added to X's general limitation overall foreign loss account in 1985.

*Example (2).* The facts are the same as in example (1), except that in 1983, X's United States source taxable income was zero. No amount is added to X's overall foreign loss account at the end of 1985. X's income and deductions for 1986 are as follows:

U.S. source taxable income.....\$1,250  
Foreign source taxable income subject to the general limitation.....\$300

X has a net operating loss carryover to 1986 of \$850 (\$1,250 - \$400). The \$850 net operating loss carryover is comprised of \$600 of foreign losses (\$1,000 of 1985 loss, minus \$400 offset by foreign source income in the carryback year) and \$250 of United States source loss. The \$600 foreign source component of the net operating loss is first allocated to X's foreign source taxable income subject to the general limitation in 1986, in accordance with § 1.904(f)-3(a), prior to reducing United States source income. The \$250 United States source component of the net operating loss component is also allocated first to United States income in the carryover year before reducing any foreign source income. Thus, \$300 of the remaining \$600 of foreign source net operating loss carryover is first applied to eliminate foreign source income in the carryover year, leaving \$300 of foreign source net operating loss. The \$250 United States source component of the net operating loss reduces United States source taxable income to \$1,000 in 1986. This \$1,000 of United States source income is then further reduced by the remaining \$300 of foreign source net operating loss. Therefore, in 1986, X has \$700 of United States source income and \$300 is added to X's general limitation overall foreign loss account in accordance with § 1.904(f)-1(d)(4) of this section.

*Example (3).* Z is a domestic corporation that does business in the United States and abroad. For taxable years prior to 1983, Z computed its overall foreign losses on a separate limitation basis. In 1980, Z had \$100 of United States source income and (\$100) of foreign source loss subject to the general limitation. On December 31, 1980, the balance in Z's general limitation overall foreign loss account was \$100. In 1981, Z had \$50 of United States source income and \$100 of

general limitation foreign source income. In 1982, Z also had \$50 United States source income and \$100 foreign source general limitation income. Therefore, in both 1981 and 1982, Z recaptured \$50 and at the end of 1982, Z's general limitation overall foreign loss account was reduced to zero. In 1983, Z had no income. In 1984, Z had a (\$150) United States source loss and a (\$150) general limitation foreign source loss. The 1984 net operating loss is carried back first to 1981 and then to 1982. Because of the overall foreign loss recapture that occurred in those years, Z is considered to have \$100 of United States source income and \$50 of foreign source income in each year. Thus, in 1981, (\$50) of the (\$150) foreign source component of the carryback eliminated the \$50 foreign source income in that year and (\$100) of the (\$150) domestic source component of the carryback eliminated the United States source income in that year. In 1982, (\$50) of the remaining domestic source component of the net operating loss reduced the United States source income to \$50. The remaining (\$100) of the foreign source component of the loss first reduced the foreign source income to zero and then reduced the remaining United States source income to zero, thus creating a \$50 overall foreign loss. Therefore, at the end of 1984, Z has \$50 in its general limitation overall foreign loss account.

**Example (4).** In 1985, V Corporation has a general limitation loss of <\$1,000> and other income or loss in that year. The 1985 loss is carried back to 1982. For taxable years prior to 1983, V computed its overall foreign losses on a combined basis for income subject to the passive interest limitation, the DISC dividend limitation, and the general limitation. In 1982, V had \$400 of passive interest limitation income and \$200 of general limitation income and \$1,000 of United States source taxable income. Under paragraph (d) of this section, the \$1,000 NOL attributable to the 1985 loss is first offset by the general limitation income in 1982 and then the United States source passive interest limitation income in that year. V therefore adds \$800 to its general limitation overall foreign loss account in 1985.

**Example (5).** In 1982, W Corporation has a general limitation loss of <\$500> and \$200 of passive interest limitation income. For taxable years prior to 1983, W computed its overall foreign losses on a combined basis. W has no other taxable income or loss. W cannot carry back the \$300 NOL and so it carries it forward to 1983, a year in which it has \$600 passive interest limitation income and \$500 of United States source income and no general limitation income. Under paragraph (d) of this section, the NOL is not offset by the foreign source income in 1984 but first is applied against United States source income. Thus, \$300 is added to W's general limitation overall foreign loss account in 1984.

#### § 1.904(f)-4 Recapture of foreign losses out of accumulation distributions from a foreign trust.

(a) *In general.* If a taxpayer receives a distribution of foreign source taxable income subject to a separate limitation in which the taxpayer had a balance in an overall foreign loss account and that

income is treated under section 666 as having been distributed by a foreign trust in a preceding taxable year, a portion of the balance in the taxpayer's applicable overall foreign loss account shall be subject to recapture under this section. The amount subject to recapture shall be the lesser of the balance in the taxpayer's overall foreign loss account (after applying §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, and 1.904(f)-6 to the taxpayer's other income or loss in the current taxable year) or the entire amount of foreign source taxable income deemed distributed in a preceding year or years under section 666.

(b) *Effect of recapture on foreign tax credit limitation under section 667(d).* If paragraph (a) of this section is applicable, then in applying the separate limitation (in accordance with section 667(d)(1)(A) and (C)) to determine the amount of foreign taxes deemed distributed under section 666 (b) and (c) that can be credited against the increase in tax in a computation year, a portion of the foreign source taxable income deemed distributed in such computation year shall be treated as United States source income. Such portion shall be determined by multiplying the amount of foreign source taxable income deemed distributed in the computation year by a fraction. The numerator of this fraction is the balance in the taxpayer's overall foreign loss account (after application of §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, and 1.904(f)-6), and the denominator of the fraction is the entire amount of foreign source taxable income deemed distributed under section 666. However, the numerator of this fraction shall not exceed the denominator of the fraction.

(c) *Recapture if taxpayer deducts foreign taxes deemed distributed.* If paragraph (a) of this section is applicable and if, in accordance with section 667(d)(1)(B), the beneficiary deducted rather than credited its taxes in the computation year, the beneficiary shall reduce its overall foreign loss account (but not below zero) by an amount equal to the lesser of the balance in the applicable overall foreign loss account or the amount of the actual distribution deemed distributed in the computation year (without regard to the foreign taxes deemed distributed).

(d) *Illustrations.* The provisions of this section are illustrated by the following examples:

**Example (1).** X Corporation is a domestic corporation that has a balance of \$10,000 in its general limitation overall foreign loss account on December 31, 1980. For its taxable year beginning January 1, 1981, X's only income is an accumulation distribution from a foreign trust of \$20,000 of general limitation foreign source taxable income. Under section

666, the amount distributed and the foreign taxes paid on such amount (\$4,000) are deemed distributed in two prior taxable years. In determining the partial tax on such distribution under section 667(b), the amount added to each computation year is \$12,000 (the sum of the actual distribution plus the taxes deemed distributed (\$24,000) divided by the number of accumulation years (2)). Of that amount, \$5,000 (\$10,000/\$24,000 × \$12,000) is treated as United States source taxable income in accordance with paragraph (b) of this section. Assuming the United States tax rate is 50 percent, X's separate foreign tax credit limitation against the increase in tax in each computation year is \$3,500 (\$7,000/\$12,000 × \$6,000) instead of \$6,000 (\$12,000/\$12,000 × \$6,000). X's overall foreign loss account is reduced to zero in accordance with paragraph (a) of this section.

**Example (2).** Assume the same facts as in Example (1), except that X deducted rather than credited its foreign taxes in the computation years. In 1979, the amount added to X's income is \$12,000 under section 667(b), \$2,000 of which is deductible under section 667(d)(1)(B). X must reduce its overall foreign loss account by \$10,000, the amount of the actual distribution that is deemed distributed in 1979 (without regard to the \$2,000 foreign taxes also deemed distributed). The entire overall foreign loss account is therefore reduced to \$0 in 1979.

#### § 1.904(f)-5 Special rules for recapture of overall foreign losses of a domestic trust.

(a) *In general.* Except as provided in this section, the rules contained in §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 apply to domestic trusts.

(b) *Recapture of trust's overall foreign loss.* In taxable years in which a trust has foreign source taxable income subject to a separate limitation in which the trust has a balance in its overall foreign loss account, the balance in the trust's overall foreign loss account shall be recaptured as follows:

(1) *Trust accumulates income.* If the trust accumulates all of its foreign source taxable income subject to the same limitation as the loss that created the balance in the overall foreign loss account, its overall foreign loss shall be recaptured out of such income in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6.

(2) *Trust distributes income.* If the trust distributes all of its foreign source taxable income subject to the same limitation as the loss that created the overall foreign loss account, the amount of the overall foreign loss that would be subject to recapture by the trust under paragraph (b)(1) of this section shall be allocated to the beneficiaries in proportion to the amount of such income which is distributed to each beneficiary in that year.

(3) *Trust accumulates and distributes income.* If the trust accumulates part of its foreign source taxable income subject to the same limitation as the loss that created the overall foreign loss account and distributes part of such income, the portion of the overall foreign loss that would be subject to recapture by the trust under paragraph (b)(1) of this section if the distributed income were accumulated shall be allocated to the beneficiaries receiving income distributions. The amount of overall foreign loss to be allocated to such beneficiaries shall be the same portion of the total amount of such overall foreign loss that would be recaptured as the amount of such income which is distributed to each beneficiary bears to the total amount of such income of the trust for such year. That portion of the overall foreign loss subject to recapture in such year that is not allocated to the beneficiaries in accordance with this paragraph (b)(3) shall be recaptured by the trust in accordance with paragraph (b)(1).

(c) *Amounts allocated to beneficiaries.* Amounts of a trust's overall foreign loss allocated to any beneficiary in accordance with paragraph (b)(2) or (3) of this section shall be added to the beneficiary's applicable overall foreign loss account and treated as an overall foreign loss of the beneficiary incurred in the taxable year preceding the year of such allocation. Such amounts shall be recaptured in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 out of foreign source taxable income distributed by the trust which is subject to the same separate limitation.

(d) *Section 904(f)(3) dispositions to which § 1.904(f)-2(d)(4)(i) is applicable.* Foreign source taxable income recognized by a trust under § 1.904(f)-2(d)(4) on a disposition of property used in a trade or business outside the United States shall be deemed to be accumulated by the trust. All such income shall be used to recapture the trust's overall foreign loss in accordance with § 1.904(f)-2(d)(4).

(e) *Illustrations.* The provisions of this section are illustrated by the following examples:

*Example (1).* T, a domestic trust, has a balance of \$2,000 in a general limitation overall foreign loss account on December 31, 1983. For its taxable year ending on December 31, 1984, T has foreign source taxable income subject to the general limitation of \$1,600, all of which it accumulates. Under paragraph (b)(1) of this section, T is required to recapture \$800 in 1984 (the lesser of the overall foreign loss or 50 percent of the foreign source taxable

income). This amount is treated as United States source income for purposes of taxing T in 1984 and upon subsequent distribution to T's beneficiaries. At the end of its 1984 taxable year, T has a balance of \$1,200 in its overall foreign loss account.

*Example (2).* The facts are the same as in example (1). In 1985, T has general limitation foreign source taxable income of \$1,000, which it distributes to its beneficiaries as follows: \$500 to A, \$250 to B, and \$250 to C. Under paragraph (b)(1) of this section, T would have been required to recapture \$500 of its overall foreign loss if it had accumulated all of such income. Therefore, under paragraph (b)(2) of this section, T must allocate \$500 of its overall foreign loss to A, B, and C as follows: \$250 to A ( $\$500 \times \$500 / \$1,000$ ), \$125 to B ( $\$500 \times \$250 / \$1,000$ ), and \$125 to C ( $\$500 \times \$250 / \$1,000$ ). Under paragraph (c) of this section and § 1.904(f)-1(d)(4), A, B, and C must add the amounts of general limitation overall foreign loss allocated to them from T to their overall foreign loss accounts and treat such amounts as overall foreign losses incurred in 1984. A, B, and C must then apply the rules of §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 to recapture their overall foreign losses. T's overall foreign loss account is reduced in accordance with § 1.904(f)-1(e)(1) by the \$500 that is allocated to A, B, and C. At the end of 1985, T's general limitation overall foreign loss account has a balance of \$700.

*Example (3).* The facts are the same as in example (2), including an overall foreign loss account at the end of 1984 of \$1,200, except that in 1985 T's general limitation foreign source taxable income is \$1,500 instead of \$1,000, and T accumulates the additional \$500. Under paragraph (b)(1) of this section, T would be required to recapture \$750 of its overall foreign loss if it accumulated all of the \$1,500. Under paragraph (b)(3) of this section, T must allocate \$500 of its overall foreign loss to A, B, and C as follows: \$250 to A ( $\$750 \times \$500 / \$1,500$ ) and \$125 each to B and C ( $\$750 \times \$250 / \$1,500$ ). T must also recapture \$250 of its overall foreign loss, which is the amount subject to recapture in 1985 that is not allocated to the beneficiaries ( $\$750 - \$500 = \$250$ ). Under § 1.904(f)-1(e)(1), T reduces its general limitation overall foreign loss account by \$500. Under § 1.904(f)-1(e)(2), T reduces its general limitation overall foreign loss account by \$250. At the end of 1985 there is a balance in the general limitation overall foreign loss account of \$450 ( $(\$1,200 - \$500) - \$250$ ).

**§ 1.904(f)-6 Transitional rule for recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983, from foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982.**

(a) *General rule.* For taxable years beginning after December 31, 1982, foreign source taxable income subject to the general limitation includes foreign oil related income (as defined in section 907(c)(2) prior to its amendment by section 211 of the Tax Equity and Fiscal

Responsibility Act of 1982). However, for purposes of recapturing general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983) out of foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982 (post-1982), the taxpayer shall make separate determinations of foreign oil related income and other general limitation income (as if the FORI limitation under "old section 907(b)" (prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982) were still in effect), and shall apply the rules set forth in this section. The taxpayer shall maintain separate accounts for its pre-1983 FORI limitation overall foreign losses, its pre-1983 general limitation overall foreign losses (or its pre-1983 section 904(d)(1)(A-C) overall foreign losses if such losses were computed on a combined basis), and its post-1982 general limitation overall foreign losses. The taxpayer shall continue to maintain such separate accounts, make such separate determinations, and apply the rules of this section separately to each account until the earlier of—

(1) Such time as the taxpayer's entire pre-1983 FORI limitation overall foreign loss account and pre-1983 general limitation overall foreign loss account (or, if the taxpayer determined pre-1983 overall foreign losses on a combined basis, the section 904(d)(1)(A-C) account) have been recaptured, or

(2) The end of the taxpayer's 8th post-1982 taxable year, at which time the taxpayer shall add any remaining balance in its pre-1983 FORI limitation account and pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) account) to its post-1982 general limitation overall foreign loss account.

(b) *Recapture of pre-1983 FORI and general limitation overall foreign losses from post-1982 income.* A taxpayer having a balance in its pre-1983 FORI limitation overall foreign loss account or its pre-1983 general limitation overall foreign loss account (or its pre-1983 section 904(d)(1)(A-C) account) in a post-1982 taxable year shall recapture such overall foreign loss as follows:

(1) *Recapture from income subject to the same limitation.* The taxpayer shall first apply the rules of §§ 1.904(f)-1 through 1.904(f)-5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 FORI limitation overall foreign loss account, and shall apply such rules to the taxpayer's separately determined general limitation income (exclusive of

foreign oil related income) to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account. Rules for determining the recapture of the pre-1983 section 904(d)(1)(A-C) losses are contained in § 1.904(f)-2(c)(4).

(2) *Recapture from income subject to the other limitation.* The taxpayer shall next apply the rules of § 1.904(f)-1 through -5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) and shall apply such rules to the taxpayer's separately determined general limitation income to recapture foreign oil related losses to the extent that—

(i) The amount recaptured from such separately determined income under paragraph (b)(1) of this section is less than 50 percent (or such larger percentage as the taxpayer elects) of such separately determined income, and

(ii) The amount recaptured from such separately determined income under this paragraph (b)(2) does not exceed an amount equal to 12½ percent of the balance in the taxpayer's pre-1983 FORI limitation overall foreign loss account or the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) at the beginning of the taxpayer's first post-1982 taxable year, multiplied by the number of post-1982 taxable years (including the year to which this rule is being applied) which have elapsed, less the amount (if any) recaptured in prior post-1982 taxable years under this paragraph (b)(2) from such separately determined income.

The taxpayer may elect to recapture a pre-1983 overall foreign loss from post-1982 income subject to the general limitation at a faster rate than is required by this paragraph (b)(2). This election shall be made in the same manner as an election to recapture more than 50 percent of the income subject to recapture under section 904(f)(1), as provided in § 1.904(f)-2(c)(2).

(c) *Coordination of recapture of pre-1983 and post-1982 overall foreign losses.* A taxpayer incurring a general limitation overall foreign loss in any post-1982 taxable year in which the taxpayer has a balance in a pre-1983 FORI limitation or its pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) shall establish a separate overall foreign loss account for such loss. The taxpayer shall recapture its overall foreign losses in succeeding taxable years by first applying the rules

of this section to recapture its pre-1983 overall foreign losses, and then applying the rules of §§ 1.904(f)-1 through 1.904(f)-5 to recapture its post-1982 general limitation overall foreign loss. A post-1982 general limitation overall foreign loss is required to be recaptured only to the extent that the amount of foreign source taxable income recharacterized under paragraph (b) of this section is less than 50 percent of the taxpayer's total general limitation foreign source taxable income (including foreign oil related income) for such taxable year (except as required by section 904(f)(3)). However, a taxpayer may elect to recapture at a faster rate.

(d) *Illustrations.* The provisions of this section are illustrated by the following examples:

*Example (1).* X Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, X has a balance of \$1,000 in its section 904(d)(1)(A-C) overall foreign loss account. X does not have a balance in a FORI limitation overall foreign loss account. For 1983, X has income of \$1,200, which was subject to the general limitation and includes foreign oil related income of \$1,000 and other general limitation income of \$200. In 1983, X is required to recapture \$225 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(1) of this section.....\$100

The amount recaptured from general limitation income exclusive of foreign oil related income is the lesser of \$1,000 (the pre-1983 loss reflected in the section 904(d)(1)(A-C) overall foreign loss account) or 50 percent of \$200 (the separately determined general limitation income (exclusive of foreign oil related income)).

Amount recaptured under paragraph (b)(2) of this section.....\$125

The amount recaptured from foreign oil related income is the lesser of \$900 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account after recapture under paragraph (b)(1) of this section) or 50 percent of \$1,000 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000 × 1) = \$0, which is \$125.

Total amount recaptured in 1983.....\$225

*Example (2).* The facts are the same as in example (1), except that X has general limitation income of \$50 for 1984 and \$600 for 1985, all of which is foreign oil related income. X is required to recapture \$25 in 1984 and \$225 in 1985 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(2) of this section in 1984.....\$25

The amount recaptured from foreign oil related income is the lesser of \$775 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account or 50 percent of \$50 (the separately determined foreign oil related income)). This amount is within the

limitation of paragraph (b)(2)(ii) of this section, (12½ percent of \$1,000 × 2) = \$125, which is \$125.

Amount recaptured under paragraph (b)(2) of this section in 1985.....\$225

The amount recaptured from foreign oil related income is the lesser of \$750 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account) or 50 percent of \$600 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000 × 3) = (\$125 + \$25), which is \$225. (\$125 is the amount recaptured in 1983 under paragraph (b)(2) of this section, and \$25 is the amount recaptured in 1984 under paragraph (b)(2) of this section.)

*Example (3).* Y Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Y has a balance of \$400 in its section 904(d)(1)(A-C) overall foreign loss account. Y does not have a balance in a FORI overall foreign loss account. For 1983, Y has a general limitation overall foreign loss of \$200. For 1984, Y has general limitation income of \$1,200, all of which is foreign oil related income. In 1984, Y is required to recapture a total of \$300 computed as follows:

Amount of pre-1983 overall foreign loss recaptured under paragraph (b)(2) of this section.....\$100

The amount of the pre-1983 section 904(d)(1)(A-C) overall foreign loss account attributable to a general limitation loss recaptured from foreign oil related income is the lesser of \$400 (the loss) or 50 percent of \$1,200 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$400 × 2) = \$0, which is \$100.

Amount of post-1982 overall foreign loss recaptured under paragraph (c) of this section.....\$200

The amount of post-1982 general limitation overall foreign loss recaptured is the amount computed under § 1.904(f)-2(c)(1), which is the lesser of \$200 (the post-1982 loss) or 50 percent of \$1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income ((50 percent of \$1,200) = \$100 recaptured under paragraph (b) = \$500).

Total amount recaptured in 1984.....\$300

At the end of 1984, Y has a balance in its pre-1983 section 904(d)(1)(A-C) overall foreign loss account of \$300, and has reduced its post-1982 general limitation overall foreign loss account to zero.

*Example (4).* Z is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Z has a balance of \$400 in its section 904(d)(1)(A-C) overall foreign loss account, and a balance of \$1,000 in its FORI limitation overall foreign loss account. For 1983, Z has general limitation income of \$2,000, which includes foreign oil related income of \$1,000 and other general limitation income of \$1,000. Keeping these amounts separate for purposes of this section, Z is required to recapture a total of \$1,000 in 1983, computed as follows:

## Amount recaptured under paragraph

(b)(1) of this section.....\$300

## The amount of pre-1983 section

904(d)(1)(A-C) overall foreign loss account recaptured from general limitation income exclusive of foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$400 (the section 904(d)(1)(A-C) overall foreign loss) or 50 percent of \$1,000, the general limitation income exclusive of foreign oil related income, which is \$400.

The amount of pre-1983 FORI overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$1,000 (the FORI overall foreign loss) or 50 percent of \$1,000 (the foreign oil related income), which is \$500.

## Amount recaptured under paragraph

(b)(2) of this section.....\$100

The amount of pre-1983 FORI 907(b) overall foreign loss recaptured from section general limitation income exclusive of foreign oil related income is the lesser of \$500 (the remaining balance in that loss account) or 50 percent of \$1,000 (the general limitation income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or \$100 (50 percent of \$1,000)—\$400 recaptured due to section 904(d)(1)(A-C) overall foreign loss account, and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is  $(12\frac{1}{2}\text{ percent of } \$1,000 \times 1) = \$0$ , or \$125.

Total amount recaptured in 1983.....\$1,000

At the end of 1983, Z has reduced its pre-1983 section 904(d)(1)(A-C) overall foreign loss account to zero, and has a balance in its pre-1983 FORI overall foreign loss account of \$400.

**Par. 3.** A new § 1.1502-9 is added immediately following § 1.1502-7 to read as set forth below:

**§ 1.1502-9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.**

(a) *In general.* An affiliated group of corporations filing a consolidated return sustains an overall foreign loss (a consolidated overall foreign loss) in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in § 1.904(f)-1(c)(2)) is exceeded by the sum of the deductions properly allocated and apportioned thereto. However, for taxable years prior to 1983, affiliated groups may have determined their overall foreign losses for income subject to the passive interest limitation, DISC dividend limitation, and general limitation on a combined basis in accordance with the rules in § 1.904(f)-1(c)(1). The rules contained in §§ 1.904(f)-1 through 1.904(f)-6 are applicable to affiliated groups filing consolidated returns. This section provides special rules for applying those sections to such groups. Paragraph (b) provides rules for

additions and subtractions of a portion of overall foreign losses to and from consolidated overall foreign loss accounts. Paragraph (c) requires that separate notional overall foreign loss accounts be kept for each member of the group that contributes to a consolidated overall foreign loss account and provides for allocation of a portion of the group's overall foreign loss account to a member when the member leaves the group prior to recapture of the entire amount of the loss account. These rules are similar to the rules provided in § 1.1502-79 concerning the apportionment of consolidated net operating losses to a member who leaves the group. However, the rules differ somewhat because the absorption rule of § 1.1502-79 is applied year-by-year, consistently with the sequence rules of section 172(b), and recapture of overall foreign losses is based on overall foreign loss accounts that may consist of losses in more than one year. Paragraph (d) provides rules for recapture of amounts in consolidated overall foreign loss accounts. Paragraph (e) provides special rules pertaining to section 904(f)(3) dispositions between members of a group. Paragraphs (b), (c), and (e) also contain special rules that apply to overall foreign losses that arise in separate return limitation years; the principles therein also apply to overall foreign losses when there has been a consolidated return change of ownership (as defined in § 1.1502-1(g)).

(b) *Consolidated overall foreign loss accounts.* Any group that sustains an overall foreign loss (or acquires a member with a balance in an overall foreign loss account) must establish a consolidated overall foreign loss account for such loss, and amounts shall be added to and subtracted from such account as provided in §§ 1.904(f)-1 through 1.904(f)-6 and this section.

(1) *Additions to the consolidated overall foreign loss accounts—(i) Consolidated overall foreign losses.* Any consolidated overall foreign loss shall be added to the applicable consolidated overall foreign loss account for such separate limitation, to the extent that the overall foreign loss has reduced United States source income, in accordance with the rules of §§ 1.904(f)-1 and 1.904(f)-3.

(ii) *Overall foreign losses from separate return years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return year that is not a separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss

account in such year and treated as a consolidated overall foreign loss incurred in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iii) *Overall foreign losses from separate return limitation years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such consolidated return year to the extent of the lesser of the balance in the overall foreign loss account from the separate return limitation year or 50 percent (or such larger percentage as the taxpayer may elect) of the difference between the consolidated foreign source taxable income subject to the same separate limitation (computed in accordance with §§ 1.904(f)-2(b) and 1.1502-4(d)(1)) minus such consolidated foreign source taxable income recomputed by excluding the items of income and deduction of such corporation (but not less than zero). The amount added to a consolidated overall foreign loss account in any taxable year under this paragraph (b)(1)(iii) shall be treated as a consolidated overall foreign loss in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iv) *Overall foreign losses that are part of a net operating loss or net capital loss carried over from a separate return limitation year.* Overall foreign losses that are part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as though they were added to an overall foreign loss account in a separate return limitation year of such member and will be subject to the limitation on recapture of SRLY losses contained in paragraph (b)(1)(iii) of this section. See paragraph (c)(2) of this section for rules regarding the addition of such losses to the applicable overall foreign loss account of such member.

(2) *Reductions of the consolidated overall foreign loss accounts—(i) Amounts allocated to members leaving the group.* When a member leaves the group, each applicable consolidated overall foreign loss account shall be

reduced by the amount allocated from such account to such member in accordance with paragraph (c)(3)(i) of this section.

(ii) *Amounts recaptured.* A consolidated overall foreign loss account shall be reduced by the amount of any overall foreign loss under the same separate limitation that is recaptured from consolidated income in accordance with § 1.904(f)-2.

(c) *Allocation of overall foreign losses among members of an affiliated group—*

(1) *Notional overall foreign loss accounts.* Separate notional overall foreign loss accounts shall be established for each member of a group that contributes to a consolidated overall foreign loss account. Additions to and reductions of such notional accounts shall be made when additions or reductions are made to consolidated overall foreign loss accounts in accordance with paragraph (b) of this section and § 1.904(f)-1.

(i) *Additions to notional accounts—*  
(A) *Consolidated overall foreign losses.* When a consolidated overall foreign loss is added to a consolidated overall foreign loss account, each member shall add its pro rata share of the amount of such loss to the member's notional overall foreign loss account. A member's pro rata share of a consolidated overall foreign loss for any taxable year is determined by multiplying the consolidated loss by a fraction. The numerator of this fraction is the amount by which the member's separate gross income for the taxable year from sources without the United States subject to the applicable separate limitation is exceeded by the sum of the deductions properly allocated and apportioned thereto (including such member's share of any consolidated net operating loss deduction and consolidated net capital loss carryovers and carrybacks to the taxable year), for each member with such deductions in excess of such income. The denominator of this fraction is the sum of the numerators of this fraction for all such members of the group.

(B) *Overall foreign losses from separate return years and separate return limitation years.* When an amount from a member's overall foreign loss account from a separate return year or separate return limitation year is added to a consolidated overall foreign loss account in accordance with paragraph (b)(1)(ii) or (iii) of this section, such amount shall also be added to that member's notional overall foreign loss account for such separate limitation.

(ii) *Reductions of notional accounts.* When a consolidated overall foreign

loss account is reduced by recapture, in accordance with paragraph (b)(2)(ii) of this section, each member of the group shall reduce its notional overall foreign loss account for that separate limitation by its pro rata share of the amount by which the consolidated overall foreign loss account is reduced. A member's pro rata share of the amount by which a consolidated overall foreign loss account is reduced and determined by multiplying the amount recaptured by a fraction, the numerator of which is the amount in such member's notional account under such separate limitation, and the denominator of which is the amount in the consolidated overall foreign loss account under such separate limitation before reduction for the amount recaptured for that taxable year.

(2) *Overall foreign losses that are part of a net operating loss or net capital loss from a separate return limitation year.* An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as an overall foreign loss of such member (rather than the group) and shall be added to such member's separate overall foreign loss account to the extent it reduces United States source income, in accordance with § 1.904(f)-1(d)(5). Such overall foreign losses shall be added to the appropriate consolidated overall foreign loss account in later years in accordance with paragraph (b)(1)(iii) of this section.

(3) *Allocation of a portion of overall foreign loss accounts to a member leaving the group—*  
(i) *Consolidated overall foreign losses.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, a portion of the balance in each applicable consolidated overall foreign loss account shall be allocated to such corporation. The amount allocated to such corporation shall be equal to the amount, if any, in such member's notional overall foreign loss account under the same separate limitation.

(ii) *Overall foreign losses from separate return limitation years.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, it shall take with it the remaining portion of each separate overall foreign loss account for overall foreign losses from separate return limitation years (including amounts added to such accounts under paragraph (c)(2) of this section).

(d) *Recapture of consolidated overall foreign losses.* The amount in any consolidated overall foreign loss account shall be recaptured under

§§ 1.904(f)-1 through 1.904(f)-6 by recharacterizing consolidated foreign source taxable income subject to the separate limitation under which the loss arose as United States source taxable income. For purposes of recapture, consolidated foreign source taxable income subject to the separate limitation under which the loss arose shall be determined in accordance with §§ 1.904(f)-2 and 1.1502-4. Amounts in a member's excess loss account that are included in income under § 1.1502-19 shall be subject to recapture to the extent that they are included in consolidated foreign source taxable income subject to the separate limitation under which the loss arose.

(e) *Dispositions of property between members of the same affiliated group during a consolidated return year—*  
(1) *In general.* Except as provided in paragraph (2) with respect to overall foreign losses of a selling member from a separate return limitation year, the rules of § 1.1502-13 with respect to intercompany transactions will apply to dispositions of property to which section 904(f)(3)(A) applies.

(2) *Recapture of overall foreign loss from a separate return limitation year.* Paragraph (1) will not apply and gain will be recognized to the extent that the selling member has a balance in its overall foreign loss account from a separate return limitation year unless the selling member adds the entire amount of its overall foreign loss account from separate return limitation years to the applicable consolidated overall foreign loss account and treats such amount as an overall foreign loss incurred in the previous year. Such loss shall be subject to recapture, in accordance with paragraph (d) of § 1.1502-9, beginning in the same year in which it is added to the consolidated overall foreign loss account.

(f) *Illustrations.* The provisions of this section are illustrated by the following examples. All foreign source income or loss in these examples is subject to the general limitation.

*Example (1).* A, B, and C are the members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1983, A, B, and C file a consolidated return. ABC has United States source income of \$1,000 and foreign source losses (overall foreign loss) of \$400. In accordance with paragraph (b)(1)(i) of this section, ABC adds \$400 to its consolidated overall foreign loss account at the end of 1983. For 1983, the separate foreign source taxable income (or loss) of A is \$400, of B is (\$200), and of C is (\$800). Under paragraph (c)(1) of this section, B and C must establish separate notional overall foreign loss accounts. Under paragraph (c)(1)(i)(A) of

this section, the amount added to each notional account is the pro rata share of the consolidated overall foreign loss of each member contributing to such loss. The pro rata share is determined by multiplying the consolidated loss by the member's proportionate share of the total foreign source losses of all members having such losses. B's foreign source loss is \$200 and C's foreign source loss is \$600, totaling \$800. B must add \$400x200/800, or \$100, to its notional overall foreign loss account. C must add \$400x600/800, or \$300, to its notional overall foreign loss account.

**Example (2).** The facts are the same as in example (1). In 1984, ABC has consolidated foreign source taxable income of \$200. Under paragraph (d) of this section and § 1.904(f)-2, ABC is required to recapture \$100 of the amount in its consolidated overall foreign loss account, which reduces that account by \$100 under paragraph (b)(2)(ii) of this section. In accordance with paragraph (c)(1)(ii) of this section, B reduces its notional account by \$100x100/400, or \$25, and C reduces its notional account by \$100x300/400, or \$75. At the end of 1984 ABC has \$300 in its consolidated overall foreign loss account, B has \$75 in its notional account, and C has \$225 in its notional account.

**Example (3).** D and E are members of an affiliated group and file separate returns using the calendar year as their taxable year for 1980. In 1980, D has an overall foreign loss of \$200, which it adds to its overall foreign loss account, and E has no overall foreign losses. For 1981, D and E file a consolidated return, and DE must establish a consolidated overall foreign loss account, to which D's overall foreign loss from 1980 is added under paragraph (b)(1)(ii) of this section. D also adds the same amount \$200 to its notional account under paragraph (c)(1)(i)(B) of this section. In 1981, DE has consolidated foreign source taxable income of \$300. Since the amount added to the consolidated overall foreign loss account in 1981 is treated as a consolidated overall foreign loss from 1980, DE must recapture \$150 in 1981 under paragraph (d) of this section and § 1.904(f)-2. DE's consolidated overall foreign loss account is reduced by \$150 under paragraph (b)(2)(ii) of this section, and D's notional account is reduced by \$150 under paragraph (c)(1)(ii) of this section, leaving balances of \$50 in each of those accounts at the end of 1981.

**Example (4).** F and G are not members of an affiliated group in 1980, and G has an overall foreign loss of \$200, which it adds to its overall foreign loss account. F has no overall foreign loss. On January 1, 1981, F acquires G, and FG files a consolidated return for the calendar year 1981. In 1981, F has no foreign source taxable income or loss, and G has \$100 of foreign source taxable income. FG's consolidated foreign source taxable income, \$100, minus such income without G's items of income and deduction, \$0, is \$100. Therefore 50% of that amount, \$50, of G's overall foreign loss from its 1980 separate return limitation year is added to FG's consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section, and the same amount is added to G's notional account under paragraph (c)(1)(i)(B)

of this section. In accordance with paragraph (d) of this section and § 1.904(f)-2, FG must recapture the \$50 balance in its consolidated overall foreign loss account in 1981 because the amount added from G's separate return limitation year is treated as a 1980 consolidated overall foreign loss. At the end of 1981, FG has a balance of \$0 in its consolidated overall foreign loss account, G has \$0 in its notional account, and G also has \$150 remaining from its 1980 overall foreign loss that has not yet been added to the consolidated overall foreign loss account.

On January 1, 1982, F sells G and G leaves the affiliated group. Under paragraph (c)(3)(i) of this section, G takes with it the balance in its overall foreign loss account from 1980 (its prior separate return limitation year) that has not been added to the consolidated account. G has \$150 of overall foreign loss in its overall foreign loss account. Because the amount in the consolidated overall foreign loss account is zero, no amount from that account is allocated to G.

**Example (5).** (i) In 1982 corporation H has United States source income of \$300 and foreign source losses of \$500, resulting in a net operating loss of \$200 and a balance in H's overall foreign loss account at the end of 1982 of \$300.

(ii) On January 1, 1983, H is acquired by J, and for the calendar year 1983 JH files a consolidated return. JH has consolidated taxable income of \$700 in 1983, including a consolidated net operating loss deduction of \$100. This net operating loss deduction is \$100 of H's \$200 net operating loss from 1982 (a separate return limitation year), which is limited by § 1.1502-21(c). For 1983, H has separate taxable income of \$100, comprised of \$100 of United States source taxable income and zero foreign source taxable income, and J has separate taxable income of \$700, comprised of \$700 of United States source taxable income and zero foreign source taxable income. Under paragraph (c)(2) of this section, H adds \$100 to its separate overall foreign loss account, since that amount of its net operating loss has reduced United States source income. H has \$400 in its separate overall foreign loss account at the end of 1983, none of which has been added to a consolidated overall foreign loss account.

(iii) In 1984, H has separate taxable income of \$400, comprised of \$100 of United States source taxable income and \$300 of foreign source taxable income. J has separate taxable income of \$900, comprised of \$700 of United States source taxable income and \$200 of foreign source taxable income. JH has consolidated taxable income of \$1200, which includes \$100 of consolidated net operating loss deduction from H's 1982 net operating loss. Since this net operating loss deduction is allocated to foreign source income, it does not reduce United States source income and will not be added to an overall foreign loss account. Under paragraph (b)(1)(iii) of this section, \$100, from H's overall foreign loss is added to the consolidated overall foreign loss account computed as follows:

Consolidated foreign source taxable income .....	\$400
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Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deduction .....	-200
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\$200.....	
× 50% .....	\$100
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account.....	\$100

This amount is subject to recapture beginning in the same taxable year, as it is treated as a consolidated overall foreign loss incurred in a previous year. Therefore, under paragraph (d) of this section and § 1.904(f)-2 JH also recaptures this \$100, reducing the consolidated overall foreign loss account to \$0. H has \$300 remaining in its separate overall foreign loss account at the end of 1984.

(iv) In 1985, H has separate taxable income of \$400, comprised of \$100 of United States source taxable income and \$300 of foreign source taxable income. J has separate taxable income of \$300 comprised of \$600 of United States source taxable income and \$300 of foreign source losses. JH has consolidated taxable income of \$700, all of which is United States source. Under paragraph (b)(1)(iii) of this section an additional \$150 from H's separate overall foreign loss is added to the consolidated overall foreign loss account, computed as follows:

Consolidated foreign source taxable income .....	\$0
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions.....	=(300)

300.....	
× 50% .....	\$150
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account.....	\$150

Thus, an additional \$150 of H's separate overall foreign loss is added to the consolidated overall foreign loss account, and, under paragraph (c)(1)(i)(B) of this section, the same amount is added to J's notional account. While this amount is subject to recapture beginning in the same taxable year, JH has no consolidated foreign source taxable income on 1985, so no overall foreign loss is recaptured. H has a remaining balance of \$150 in its separate return limitation year overall foreign loss account and HJ has \$150 in its consolidated overall foreign loss account.

**Example (6).** A, B, and C are members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1986, A, B, and C file a consolidated return. A has an overall foreign loss account which arose in a separate return limitation year. The amount in the overall foreign loss account is \$2,000. A makes a disposition of all its assets to B on January 1, 1986. The gain on the transfer is \$1,500, all of which would be recognized under section 904(f)(3). However,

if A adds the total amount of its overall foreign loss from separate return limitation years to ABC's consolidated overall foreign loss account, no gain will be recognized on the transfer until a restoration event under section 1.1502-13(f) occurs. In the interim, any foreign source gain of the purchasing member (or any other member of the consolidated group) may be used to recapture on a consolidated basis the amount in ABC's consolidated overall foreign loss account.

#### **PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

#### **§ 602.101 [Amended]**

Par. 5. Section 602.101 (c) is amended by inserting in the appropriate place in the table "§ 1.904(f)-1 . . . 1545-0121", "§ 1.904(f)-2 . . . 1545-0121", "§ 1.904(f)-3 . . . 1545-0121", "§ 1.904(f)-4 . . . 1545-0121", "§ 1.904(f)-5 . . . 1545-0121", "§ 1.904(f)-6 . . . 1545-0121", and "§ 1.1502-9 . . . 1545-0121".

Lawrence B. Gibbs,  
Commissioner of Internal Revenue.  
Approved:

J. Roger Mentz

Assistant Secretary of the Treasury.  
July 30, 1987.

[FR Doc. 87-19337 Filed 8-21-87; 8:45 am]

BILLING CODE 4830-01-M

#### **26 CFR Parts 48 and 602**

[T.D. 8154]

#### **Excise Taxes; Sales of Diesel and Special Motor Fuel From Unattended Locations**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to sales of liquid fuel from unattended locations. The regulations affect retailers of diesel fuel, special motor fuel, and fuel used in noncommercial aviation and provide them with the guidance needed to comply with the law.

**DATE:** The regulations are effective on or after January 2, 1986.

**FOR FURTHER INFORMATION CONTACT:** William A. Jackson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-4336, not a toll-free call.

#### **SUPPLEMENTARY INFORMATION: Background**

This document contains temporary regulations amending the Excise Tax Regulations (26 CFR Part 48) under section 4041 of the Internal Revenue Code of 1986 (Code). These regulations are intended to clarify treatment of sales of liquid fuel from unattended locations.

#### **In General**

Under section 4041(a)(1) of the Code, excise taxes are imposed on the sale of any liquid sold for use as fuel in a diesel-powered highway vehicle. The taxes are imposed when the liquid is sold to an owner, lessee, or other operator of a diesel powered highway vehicle for use as fuel in such vehicle.

#### **Sales From Unattended Locations**

Section 48.4041-5(a)(1) of the regulations provides that the sale of diesel fuel, special motor fuel, or fuel used in noncommercial aviation is considered a taxable sale if the seller delivers the fuel into the fuel supply tank of a vehicle, motorboat, or aircraft. Section 48.4041-5(a)(1) further provides that for this purpose, fuel sold at a location unattended by the seller is considered to be delivered into the fuel supply tank by the seller. This provision regarding sales from unattended locations was added to the regulations by T.D. 8066, published on January 2, 1986 (51 FR 11).

The regulations clarify that the rule in § 48.4041-5(a)(1) regarding sales from unattended locations only applies to sales on or after January 2, 1986. In addition, § 48.4041-5(a)(1)(ii) of the regulations provides that sales of fuel for nontaxable uses from unattended locations will not be considered taxable if the seller maintains special devices to accurately account for sales to customers who regularly purchase fuel for nontaxable uses. The regulations further provide that the seller must maintain accurate records of such nontaxable sales.

This amendment to the regulations is effective for sales of fuel on or after January 2, 1986.

#### **Need for Temporary Regulations**

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it was found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

#### **Special Analysis**

##### **Executive Order 12291**

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

##### **Regulatory Flexibility Analysis**

No notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

##### **Paperwork Reduction Act**

The collection of information requirements contained in these temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. These regulations have been approved by OMB.

##### **Drafting Information**

The principal author of these temporary regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

##### **List of Subjects in 26 CFR Part 48**

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

##### **26 CFR Part 602**

Reporting and recordkeeping requirements.

##### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Parts 48 and 602 are amended as follows:

#### **PART 48—[AMENDED]**

Paragraph 1. The authority for Part 48 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 48.4041-5 is amended as follows:

1. The text of paragraph (a) (1) is redesignated as paragraph (a) (1) (i).
2. The second sentence of newly designated paragraph (a) (1) (i) is revised to read as set forth below.

3. A new paragraph (a) (1) (ii) is added to read as set forth below.

**§ 48.4041-5 Sales of diesel and special motor fuels and fuel for use in aircraft; rules of general application.**

(a) *Taxability of liquid fuel delivered into purchaser's tanks*—(1) *Fuel supply tanks*—(i) \* \* \* For purpose of this paragraph (a), liquid fuel sold at a location unattended by the seller (such as under a cardlock or meter system) on or after January 2, 1986, is considered to be delivered into the fuel supply tank by the seller except as provided in paragraph (a) (1) (ii) of this section. \* \* \*

(ii) If the seller maintains special devices at the unattended location to account accurately for sales of liquid fuel for nontaxable uses (such as assigning a separate "nontaxable" meter or, in a cardlock system, issuing a special "nontaxable" card to a customer who regularly purchases fuel for nontaxable uses), then such sales of liquid fuel shall be considered nontaxable. The seller must maintain sufficient records of such nontaxable sales and include in these records the name of the purchaser, the date of the purchase, and the quantity of fuel purchased in each sale.

**PART 602—[AMENDED]**

Par. 3. The authority for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

Par. 4. Section 602.101 (c) is amended by inserting the following items in the appropriate place in the table:

"§ 48.4041-5 (a) (1) (ii)..... 1545-0977"

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 13, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-19437 Filed 8-24-87; 8:45 am]

BILLING CODE 4830-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[A-10-FRL-3251-3]

**Approval and Promulgation of State Implementation Plans; Oregon**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** By this notice EPA is approving in part, and disapproving in part, the State of Oregon rules for conflict of interest of state boards.

These rules were submitted to EPA on May 31, 1986 as revisions to the Oregon State implementation plan (SIP). The submitted rules satisfy the requirements of section 128 (State Boards) of the Clean Air Act (hereinafter the Act) with respect to the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC), but fail to satisfy the requirements with respect to the Lane Regional Air Pollution Authority (LRAPA) which issues permits and enforcement orders under the Act.

**EFFECTIVE DATE:** October 26, 1987.

**ADDRESSES:** Copies of materials submitted to EPA may be examined during normal business hours at the following addresses:

Public Information Reference Unit,  
Environmental Protection Agency, 401  
M Street SW., Washington, DC 20460

Air Programs Branch (10A-86-9),  
Environmental Protection Agency,  
1200 Sixth Avenue AT-092, Seattle,  
Washington 98101

State of Oregon Department of  
Environmental Quality, Executive  
Building, 811 S.W. Sixth Avenue,  
Portland, Oregon 97204.

**FOR FURTHER INFORMATION CONTACT:**

David C. Bray, Air Programs Branch,  
Environmental Protection Agency, 1200  
Sixth Avenue AT-092, Seattle,  
Washington 98101, Telephone: (206) 442-  
4253, FTS: 399-4253.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The August 7, 1977, amendments to the Clean Air Act included a new section 128 "STATE BOARDS," which required each SIP to contain certain provisions by August 7, 1978. These provisions must require that (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of executive agency with similar powers, be adequately disclosed.

On October 24, 1978, the Oregon Department of Environmental Quality (DEQ) submitted new rules, specifically, Oregon Administrative Rules (OAR) Division 20, sections 200 through 215, as a revision of the Oregon SIP in order to satisfy the requirements of section 128 of the Act. These rules were subsequently returned to the DEQ without action by EPA because of

inadequate public notice for the DEQ's public hearing.

On February 5, 1986, the Oregon Environmental Council (OEC) notified the administrator of EPA of their intent to commence a civil action for failure to comply with an alleged non-discretionary duty under the Act. On May 8, 1986, the OEC and Kathy Williams, a private citizen, filed suit in the United States District Court for the District of Oregon, alleging that EPA failed to approve or disapprove the 1978 SIP submittal within 4 months, and that EPA failed to promulgate federal rules to implement section 128 of the Act in Oregon.

On April 25, 1986, the Environmental Quality Commission (EQC) adopted a complete consolidated SIP which included conflict of interest rules for state boards. On May 30, 1986, the DEQ submitted these rules (along with the consolidated SIP) to EPA as a revision to the Oregon SIP.

On September 15, 1986, EPA entered into a settlement agreement and consent decree with the OEC et al., for resolution of the civil suit. Specifically, EPA agreed to take expeditious action on the May 30, 1986, SIP submittal by proposing approval, disapproval or other final action on the submittal on or before February 1, 1987, and by taking final action on or before August 15, 1987.

**II. Discussion**

The "Conflict of Interest" rules submitted by the DEQ on May 30, 1986, specifically OAR 340-20-200 through 215, apply only to the EQC and the Director of the DEQ. EPA has found that these rules satisfy the requirements of section 128 of the Act for the EQC and the Director of the DEQ, and is therefore approving this submittal as a revision to the Oregon SIP, as they apply to the EQC and DEQ.

In order to determine whether there were any other boards or bodies in Oregon which issued permits or enforcement orders under the Act, EPA requested the State of Oregon Attorney General to review the state's air pollution program and identify each board or body which implemented any provision of the SIP. The Oregon Attorney General's opinion is included in the docket for this rulemaking and is available for review at the locations listed in the ADDRESSES sections.

Based on the Oregon Attorney General's opinion, EPA finds that there is one other board or body in Oregon which issues permits and enforcement orders under the Act, as contemplated by section 128. Specifically, the Lane Regional Air Pollution Authority

(LRAPA) and its Board of Directors, have been approved by EPA to run an air pollution program in Lane County, Oregon. This program includes issuing permits to sources and enforcing emission limitations under the Act. Since neither the current SIP nor the May 30, 1986, SIP submittal, contains section 128 provisions for the LRAPA and its Board of Directors, EPA finds the SIP to be deficient with respect to LRAPA and its Board of Directors. Hence, EPA is disapproving the Oregon SIP for failing to contain provisions satisfying section 128 for the LRAPA and its Board of Directors.

There are also other boards and bodies in Oregon which carry out portions of the approved SIP. However, these boards or bodies do not issue permits or enforcement orders as contemplated by section 128. The Act, and thus section 128, specifically mentions enforcement orders issued under section 113(d), section 119, and section 167. Enforcement orders other than these are not affected by the requirements of section 128. The boards and bodies, other than the DEQ, EQC and LRAPA, do not issue enforcement orders under sections 113(d), 119, or 167 of the Act. Also, the Act, under section 110(a)(2)(D), contemplates certain programs explicitly intended to be implemented through permits, namely the new source review, the prevention of significant deterioration, and the stationary source permits programs. The boards or bodies, other than the DEQ, EQC, and LRAPA, do not issue permits under these programs. These other boards may issue what they refer to as "permits," but they are simply mechanisms for implementing certain SIP control programs. These so-called "permits" are still federally enforceable since they are derived from the SIP, but they are not permits as explicitly set forth in the Act, and consequently as envisioned by section 128. Therefore, EPA finds that the SIP is not required to contain section 128 provisions for these boards and bodies. EPA's review of these boards and bodies, and its analysis of each, is included in the docket of this rulemaking and available for review at the locations listed in the ADDRESSES section.

Finally, a specific concern was raised with respect to the Oregon Board of Forestry and the control of prescribed burning of forestry residues (or slash burning). EPA finds that slash burning permits are not the type of permit contemplated in the Act as being affected by section 128. They may be referred to as "permits" but do not fall into any of the specific categories

described earlier as set forth in the Act. Instead, the slash burning program is basically a control measure which the state has chosen to implement through a permit system. Furthermore, the Oregon Attorney General found that the Board of Forestry has no involvement in the state's air pollution regulations for prescribed forestry burning. Rather, the Oregon Department of Forestry and the State Forester have jurisdiction over this activity. There appears to be some uncertainty on this issue but, in light of EPA's decision that slash burning permits are not affected by section 128, EPA finds that section 128 provisions are not required for the Board of Forestry.

### III. Response to Comments

On February 5, 1987 (52 FR 3670), EPA published in the *Federal Register* a notice of proposed rulemaking soliciting comments on the proposed approval in part, and disapproval in part, of the State of Oregon rules for conflict of interest of state boards. Comments were received from two environmental organizations during the 30-day public comment period. The following is a summary of the commenters' concern and EPA's responses.

1. The commenters contend that section 128 should apply to all air pollution permits and enforcement orders issued by state boards or bodies, not just those specifically mentioned or required by the Clean Air Act.

It is EPA's position that, in section 128, Congress only meant to address those permit programs that are specifically discussed and required under the Act. Congress could not have meant to require the restructuring of all boards that had or could have anything to do with controlling air pollution, since that would include many boards and would involve federal intervention at the lowest level of state activity. It is EPA's position that Congress did not intend for section 128 to apply to something as limited and narrow as a board which grants carpool parking permits, for example. Since Congress could not have envisioned such extensive federal intervention, EPA looks to the other parts of the Act to see what has been specifically referred to as "permits or enforcement orders under this Act." Section 110 of the Act lists the requirements of a SIP and refers to permits specifically in the context of certain programs, namely the new source review, the prevention of significant deterioration, and the stationary source permit programs. The Act refers to enforcement orders specifically in the context of section 113(d), 119, and 167 orders. EPA's

interpretation of the statute is that Congress intended section 128 to apply to the permits and enforcement orders that were specifically mentioned and required by the Act. The Administrative Agency's interpretation of a statute which it is required to administer is given substantial deference by the courts.

2. The commenters contend that section 128 should apply to all agencies and bodies that are given a role in carrying out a portion of the state air pollution control program.

Section 128 applies only to boards and bodies that issue permits and enforcement orders under the Act. Section 128 does not cover boards and bodies that adopt or promulgate rules and regulations, or simply implement provisions of the SIP not specified in the Act as a permit or enforcement order. Congress was concerned about administrative actions which did not require EPA approval as SIP revisions and was not concerned about rulemaking actions or other SIP revisions which EPA would review to determine if they were consistent with all the Act's requirements.

3. The commenters contend that since slash burning is regulated as a source of air pollution, the boards or bodies which regulate it must be covered by section 128.

Congress required that all sources of air pollution be regulated as necessary to achieve the goals of the Act. Furthermore, states may choose to regulate sources beyond that required by the Act. However, the fact that a source is regulated does not mean that section 128 must apply to the boards or bodies which do the regulating. Only boards and bodies which issue permits or enforcement orders as specifically required by the Act need be covered by section 128 provisions.

4. The commenters urge that slash burning be regulated as a "stationary source"; i.e., that EPA should use the "bubble" concept and its administrative authority to revise its definition of "stationary source" so that permits for slash burning are considered to be permits under section 110(a)(2)(D) of the Act.

EPA will take the comment under advisement but has no intention at this time to revise its definition of "stationary source" to include sources which are considered to be "area sources" under the current EPA regulations (40 CFR Parts 51 and 52).

5. The commenters indicate that, because most slash burns emit more than 100 tons of pollutants, each should be regulated as a "major stationary

source" under the PSD program, including having to obtain a PSD permit. PSD permits are required by the Act and therefore, the commenters argue, section 128 must apply to the Board of Forestry. The commenters note that the State of Oregon has included controls on slash burning as part of its program for PSD and refer to the recently revised Smoke Management Plan for new requirements relating to PSD and slash burning.

Congress defined the term "major stationary source" for purposes of PSD permitting in such a manner that sources of fugitive emissions are excluded unless specifically regulated by EPA. In the case of a slash burn, the PSD permitting process, which takes at least a year to complete (preapplication monitoring, modeling, public participating, etc.), would not be reasonable for a source which has a lifetime of no more than a few days. Congress could not have wanted to require such a burdensome permitting process for this type of fugitive source. EPA will however, take the comment under advisement but has no intention at this time to revise its definition of "major stationary source" to include fugitive emissions from slash burning.

6. The commenters indicated that since slash burning permits are required by the Oregon SIP, which is in turn required by the Act, then section 128 must apply to slash burning permits.

It is EPA's position that Congress chose to limit the scope of section 128 to just permits and enforcement orders specified under the Act. Congress could have broadened the applicability of section 128 to all emission limitations and other measures used to meet the requirements of the Act. Contrast section 110(a)(2)(B) with section 110(a)(2)(D), section 161 with section 165, section 169A(b)(2) with section 165(d), and section 172(b)(8) with section 172(b)(6) to note Congress' approach in requiring certain permits but also requiring the development of adequate control measures. Congress could not have envisioned the form of all possible control measures, nor could it have wished to require section 128 provisions for "permit" programs developed by states as control measures to meet the Act's requirements.

7. The commenters contend that the Clean Air Act specifically requires slash burning permits.

The Act requires that there be emission limitations and control measures as necessary to meet the requirements of the Act. There are a number of approaches for regulating slash burning other than requiring permits for individual burns. Rather

than setting emission limitations, the State of Oregon has chosen to adopt a permit program as the control measure for ensuring that slash burns do not adversely impact ambient air quality.

8. The commenters disagree with EPA's interpretation of the role of the Board of Forestry under state law in regulating slash burning.

EPA does not have a formal "interpretations" of the role of the Board of Forestry under state law. In this case, EPA is relying on a legal opinion from the Oregon Attorney General's Office regarding the workings of state law. EPA does have an interpretation of the role of the Board of Forestry under the EPA-approved SIP, which represents that portion of the state's air pollution control program which has been submitted to EPA and approved by EPA as meeting the requirements of the Clean Air Act. Air pollution control measures and provisions other than those in the EPA-approved SIP are not legally recognized under the Act.

9. The commenters contend that the Board of Forestry has ultimate authority over slash burning activities and must therefore be covered by section 128 provisions.

The Board of Forestry has not been granted authority by EPA to carry out any provisions of the approved SIP. There are no statutes, rules or procedures in the EPA-approved SIP for the Board of Forestry to entertain appeals of permits issued or enforcement actions taken by the State Forester or the Department of Forestry. Any such action by the Board of Forestry would be in violation of the SIP. Since the Board of Forestry has no role in implementing any air pollution control measures under the SIP, there is no need for section 128 provisions to apply to the Board. Also, the opinion of the Oregon State Attorney General is that slash burning permits are not appealable to the Board of Forestry.

10. The commenters disagree with EPA's reliance upon a State Attorney General's opinion on the above matters of state law. They want EPA to formulate its own opinion.

EPA routinely relies upon the State Attorney Generals for matter of state legal authority and state law (e.g., see 40 CFR Part 51, Subpart L). In the absence of information to the contrary (e.g., court rulings, historical practice), EPA will not generally question a state's intent nor its interpretation of its own statutes, rules and regulations. There is evidence of a path of appeal on certain matters from the State Forester to the Board of Forestry. The commenters argue that such a procedure is outlined at ORS 477.580(6) and at ORS 527.700. However,

we do not need to determine whether sufficient uncertainty exists on this issue to require clarification from the State Attorney General since, as we stated earlier, the slash burning permits are not the type envisioned in the Act as being affected by section 128.

#### IV. Final Action

EPA is today approving OAR 340-20-200 through 215, as it applies to the Department of Environmental Quality and Environmental Quality Commission, as revisions to the Oregon SIP satisfying the requirements of section 128 of the Act. However, EPA is disapproving the Oregon SIP for failure to meet the requirements of section 128 with respect to (and only with respect to) the Lane Regional Air Pollution Authority and its Board of Directors.

#### V. Administrative Review

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The proposed disapproval involves only administrative procedures and will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petition for judicial review of this action may be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1987. This action may not be challenged later in proceeding to ensure its requirements are met (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: August 17, 1987.

A. James Barnes,  
Acting Administrator.

Note: Incorporation by Reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Subpart MM, Part 52 of the Code of Federal Regulation is amended as follows:

**PART 52—[AMENDED]****Subpart MM—Oregon**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(81) to read as follows:

§ 52.1970 Identification of plan.

(c) \* \* \*

(81) Oregon Administrative Rules (OAR) Chapter 340, Division 20, Sections 200 through 215 (Conflict of Interest) submitted by the Director of the Department of Environmental Quality on May 30, 1986. These rules apply only to the Department of Environmental Quality and the Environmental Quality Commission, and not to the Lane Regional Air Pollution Authority and its Board of Directors.

(i) Incorporation by reference. (A) Letter dated May 20, 1986, from the State of Oregon Department of Environmental Quality to EPA Region 10. Oregon Administrative Rules, Chapter 340, Division 20, Sections 200, 205, 210, and 215 (Conflict of Interest) which was adopted by the Environmental Quality Commission on April 25, 1986.

3. Section 52.1985 is amended by adding paragraph (b) to read as follows:

§ 52.1985 Rules and regulations.

(b) Section 128—State Boards. EPA approval of OAR 340-20-200 through 215 is only for its application to the Department of Environmental Quality and the Environmental Quality Commission. The Oregon SIP is disapproved for failing to satisfy the requirements of section 128 of the Act with respect to (and only with respect to) the Lane Regional Air Pollution Authority and its Board of Directors.

[FR Doc. 87-19312 Filed 8-24-87; 8:45 am]

BILLING CODE 6560-50-M

**VETERANS ADMINISTRATION****48 CFR Part 825****Buy American Act—Supplies**

**AGENCY:** Veterans Administration.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Administration (VA) is changing VA Acquisition Regulation (VAAR) 825.108 to add human insulin to the Buy American Act list of excepted articles, materials and supplies contained in Federal Acquisition Regulation (FAR) 25.108(d).

The purpose of the exception is to offer manufacturers in this limited market the opportunity to offer foreign end products which will be treated as domestic and, in turn, ensure competitive bidding.

**EFFECTIVE DATE:** September 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marsha J. Grogan, Policy and Interagency Service, Office of Procurement and Supply (91A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2334.

**SUPPLEMENTARY INFORMATION:** On March 6, 1987, there was published on page 6993 of the *Federal Register* a notice of proposed rulemaking to add human insulin to the Buy American Act list of excepted articles because of indications that all but one major world supplier of human insulin manufacture and package their preparation in Europe. Applying the Buy American Act differential to these insulin suppliers virtually eliminates competition and in turn increases prices.

Interested persons were given 30 days to comment upon the proposal. The VA received no comments in response to the notice of proposed rulemaking, therefore the regulation is adopted as proposed.

**I. Executive Order 12291**

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

**II. Regulatory Flexibility Act (RFA)**

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

**III. Paperwork Reduction Act**

This final rule requires no additional information collection or recordkeeping requirement upon the public.

**List of Subjects in 48 CFR Part 825**

Government procurement.

Approved: August 18, 1987.

Thomas K. Turnage,  
Administrator.

Part 825 of Title 48 of the Code of Federal Regulations is amended as follows:

**PART 825—FOREIGN ACQUISITION**

1. The authority citation for Part 825 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Section 825.108 is revised to read as follows:

**825.108 Excepted articles, materials and supplies.**

The following items are added to the list of exceptions contained in FAR 25.108(d):

Glass, Wire  
Glass, Lead  
Insulin, Human

**825.202-70 [Amended]**

3. In 48 CFR 825.202-70(c) remove the word "Construction" and add, in its place, the word "Facilities".

**825.203 [Amended]**

4. In 48 CFR 825.203 remove the word "Construction" and add, in its place, the word "Facilities".

[FR Doc. 87-19457 Filed 8-24-87; 8:45 am]

BILLING CODE 8320-01-M

**48 CFR Parts 833 and 852****Acquisition Regulations Concerning the Competition in Contracting Act**

**AGENCY:** Veterans Administration.

**ACTION:** Final regulation; correction.

**SUMMARY:** In the *Federal Register* of Friday, July 31, 1987, (52 FR 28558-28561) the Veterans Administration (VA) adopted a rule concerning the Competition in Contracting Act (48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852). This notice is to correct three errors in that rule.

**EFFECTIVE DATE:** July 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2334.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 87-17207, in the issue of Friday, July 31, 1987, the VA published a final rule on the Competition in Contracting Act.

In sections 833.106 and 852.233-70, the date of the Protest Content provision is corrected to reflect the approval date of the final rule.

In section 852.236-88, the approval dates in the headings of the supplements to the Changes clauses were inadvertently omitted from the final rule. The VA is correcting this error by publishing the dates at this time.

# List of Subjects in 48 CFR Parts 833 and 852

Government procurement.

Dated: August 19, 1987.

C.G. Verenes,

Acting Chief, Directives Management Division.

FR Document 87 17207, published in the Federal Register of July 31, 1987, pages 28558 through 28561, is corrected as follows:

## 833.106 [Corrected]

1. On page 28561 in section 833.106, first column, fifth line, change the words "(March 1987)" to "(June 1987)."

2. In section 852.236-88, the clause to paragraph (a) and the clause to paragraph (b) are amended by revising the headings to read as follows:

## 852.236-88 Contract changes.

(a) \* \* \*

Changes—Supplement (For Changes Costing Over \$500,000) (June 1987)

\* \* \*

(b) \* \* \*

Changes—Supplement (For Changes Costing Over \$500,000 or Less) (June 1987)

\* \* \*

[FR Doc. 87-19458 Filed 8-24-87; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

#### Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1987-88 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

**SUMMARY:** This final rule amendment describes zones, in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987-88 season, that were omitted from the rulemaking dated Tuesday, July 21, 1987 (52 FR 27352). The zones described below consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1986-87 hunting season, (2) the added counties identified for 1987-88 in Appendix N of the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in

52 FR 27352 Supplementary Information), and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems.

**EFFECTIVE DATE:** August 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254-3207).

**SUPPLEMENTARY INFORMATION:** Since 1978, the Fish and Wildlife Service (FWS) has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the appropriations act for the Department of the Interior each year since 1978 (see, e.g., Pub.L. 98-473, Sec. 305; Pub. L. 99-190, Sec. 313; Pub. L. 99-591, Sec. 317). As a consequence of this restriction, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755) and, in the case of zones established for bald eagle protection, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668-668d; 54 Stat. 250).

At the time that the parent rule for this amendment was published (referenced above) the State of Illinois had not yet responded positively to the proposed rulemaking published Thursday, January 15, 1987 (52 FR 1636). This proposed rulemaking requested consent for the Service to implement and enforce nontoxic shot zones in Illinois. (The background for this issue is given at 52 FR 27359.) Thus, in compliance with the Stevens amendment requirements and the Migratory Bird Treaty Act, the FWS advised the State of Illinois in the July 21, 1987, final rule that "... Illinois nontoxic shot zone ... will not be opened to waterfowl hunting in the 1987-88 waterfowl hunting season barring timely consent to implement and

enforce steel shot regulations." Subsequently, through State statutory changes, the Illinois Department of Conservation was able to provide the required consent and the FWS is in this rulemaking, publishing the descriptions of Illinois nontoxic shot zones. This action allows the FWS to proceed with opening those nontoxic shot areas to waterfowl and coot hunting in the 1987-88 season. Indeed, the FWS has taken action in a separate rulemaking to open these areas to hunting in the 1987-88 season (the final early season frameworks for hunting migratory birds to Thursday, August 6, 1987; 52 FR 29187). This current rulemaking completes the steps necessary to allow waterfowl seasons in Illinois nontoxic shot zones. The FWS inadvertently omitted Calhoun County from Illinois zones described in the proposed rule—it has greater than 22 birds harvested/mi<sup>2</sup>—and that addition is made in the final rule.

Since the July 21, 1987, rulemaking, the State of Maine has reassessed nontoxic shot zone requirements in that State and requested that the FWS expand the areas covered by nontoxic shot restrictions in the 1987-88 waterfowl season in this amended rulemaking. State Wildlife Management Units 7 and 8 and the Brownfield Bog State Wildlife Management Unit areas have been added, and the previously published description of areas has been reorganized.

#### Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which

there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

#### Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

#### Authorship

The primary author of this rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

#### PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, sec. 3, Pub.L. 65-186, 40 Stat. 755 (16 U.S.C. 701-708h); sec. 3(h), Pub. L. 95-618, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103-04, unless otherwise noted.

2. Section 20.108 is amended by revising the Maine description and adding the Illinois description to read as follows (the introductory paragraph is being republished):

#### § 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

##### Atlantic Flyway

\* \* \* \* \*

##### Maine

1. South Zone: Wildlife Management Unit 6, 7 and 8.

2. That portion of Washington County located in the southeast section of Wildlife Management Unit 5 bounded as follows: Commencing at the junction of State Highway #6 and the Canadian Border at Vanceboro, continuing west on State Highway #6 to the junction of US Highway #1 at Topsfield, thence south on US Highway #1 where it enters Wildlife Management Unit 6 at the Baileyville-Baring town lines.

3. That portion of Brownfield Bog located in Wildlife Management Unit 4 bounded as follows: Commencing at the junction of State Highway #113, #5 and #160 in East Brownfield, following State Highway #113 and #5 northerly to the junction of US Highway #302 in Fryeburg, then easterly to the junction of US Highway #302 and the Stanley Hill Road, Fryeburg, then southerly on the Stanley Hill Road to the junction of the Harnden Road, Fryeburg, then easterly on the Harnden Road to the junction of the Smith Road, Denmark, and then southerly on the Smith Road to the West Denmark Road in West Denmark. Then easterly on the West Denmark Road to the junction of the Lord Hill Road in East Brownfield, then southerly on the Lord Hill Road to the junction of State Highway #160 and then southerly on State Highway #160 to the point of beginning.

\* \* \* \* \*

##### Mississippi Flyway

\* \* \* \* \*

##### Illinois

1. Alexander, Chalhoun, Clinton, Jackson, Jefferson, Lake, Union and Williamson Counties.

2. Carroll County, that portion east of IL-84.

3. Cass County, that portion east and/or south of IL-78, Federal-Aid Secondary Route 577 and IL-100.

4. Franklin County, that portion of Rend Lake and related subimpoundments, and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

5. Henderson County, that portion east and/or south of Federal-Aid Secondary Route 216, IL-164, Federal-Aid Secondary Route 418 and IL-96.

6. Mason County, that portion east and/or south of Federal Aid Secondary Route 461, US 136 and IL-78.

7. Putnam County, those portions west of IL-29 and east and/or south of IL-8, IL-71 and IL-28.

8. That portion of the Mississippi River and adjacent areas as bordered on the north by the Wisconsin State line and bordered on the east and south by IL-35 from the Wisconsin

State line southwest to East Dubuque, US-20 from East Dubuque southeast to IL-84, IL-84 south to IL-136 near Fulton, Federal-Aid Secondary Route 1193 (Chase Road and Sand Road) south to IL-5, IL-5 southwest to I-80, I-80 south to I-280, west to IL-92, and IL-92 west to the bridge over the Mississippi River.

9. That portion of the Mississippi River and adjacent areas as bordered on the north by the railroad bridge at Keithsburg and bordered on the east and south by Federal-Aid Secondary Route 216 from Keithsburg south to IL-164, IL-164 west to Oquawka and south to US-34, US-34 southwest to Federal-Aid Secondary Route 418 south through Carman to Lomax, IL-96 from Lomax southwest to Niota then southward through Nauvoo and Hamilton to Lima. Federal-Aid Secondary Route 2597 from Lima west to County Highway 7, County Highway 7 south to County Highway 8 and County Highway 8 west to Meyer at Lock and Dam 20.

10. That portion of the Mississippi River and adjacent areas as bordered on the north by US-36 and bordered on the east (or inland) by IL-96 from US-36 south to Mozier, Federal-Aid Secondary Route 755 from Mozier south through Hamburg, Gilead, Batchtown and Beechville to Federal-Aid Secondary Route 764 approximately 1 mile west of Golden Eagle, Federal-Aid Secondary Route 764 east to Golden Eagle and north to Federal-Aid Secondary Route 754 (County Highway 1), Federal-Aid Secondary Route 754 east of the Brussels Ferry on the Illinois River, and IL-100 from the Brussels Ferry east to Grafton.

11. That portion of the Illinois River and adjacent areas as bordered on the north and west by IL-29 from Spring Valley west to DePue and south to Peoria, US-24 from Peoria southwest to Fulton County, all of Fulton County, IL-100 from Fulton County southwest to US-67, IL-103 from US-67 west to Sugar Grove, Federal-Aid Secondary Route 582 from Sugar Grove south through LaGrange to IL-99, and IL-99 southeast to Meredosia, and bordered on the east and south by IL-89 from Spring Valley south to IL-71, IL-71 west to IL-26, IL-26 south to East Peoria, IL-29 from East Peoria south to Powerton, Federal-Aid Secondary Route 461 from Powerton west and south through Manito and Forest City to US-136, US-136 west to Havana, IL-78 from Havana south to Chandlerville, Federal-Aid Secondary Route 577 from Chandlerville west to Beardstown, IL-100 from Beardstown south to IL-104, and IL-104 west to Meredosia.

12. That portion of the Illinois River and adjacent areas as bordered on the west by IL-100 from the ferry at Kampsville south to Hardin, Federal-Aid Secondary Route 754 (County Highway 1) from Hardin south to Brussels and east to the Brussels Ferry, and bordered on the north and east by IL-108 from the ferry at Kampsville east to Eldred, Federal-Aid Primary Route 155 from Eldred south to IL-100, and IL-100 south to the Brussels Ferry.

13. Adams County, the Bear Creek Unit of Mark Twain National Wildlife Refuge.

14. Upper Mississippi River Wildlife and Fish Refuge.

\* \* \* \* \*

Dated: August 13, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. 87-19428 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 661

[Docket No. 70845-7085]

#### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries  
Services (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure and request  
for comments.

**SUMMARY:** NOAA announces the closure  
of recreational salmon fisheries in the  
exclusive economic zone (EEZ) from  
Cape Falcon, Oregon, to the U.S.-  
Canada border, at noon, August 20, 1987,  
to ensure that the chinook salmon quota  
is not exceeded. The Director,  
Northwest Region, NMFS (Regional  
Director), has determined in  
consultation with representatives of the  
Pacific Fishery Management Council  
(Council), the Washington Department  
of Fisheries (WDF) and the Oregon  
Department of Fish and Wildlife  
(ODFW), that the overall commercial-  
recreational fishery quota of chinook  
salmon for the area will be reached by  
that time. The closure is necessary to  
conform to the preseason announcement  
of 1987 management measures. This  
action is intended to ensure  
conservation of chinook salmon.

**EFFECTIVE DATE:** Closure of the EEZ  
from Cape Falcon, Oregon, to the U.S.-  
Canada border to recreational salmon  
fishing is effective at 1200 hours local  
time, August 20, 1987. Comments on this  
closure will be received until September  
4, 1987.

**ADDRESSES:** Comments may be mailed  
to Rolland A. Schmitten, Director,  
Northwest Region, NMFS, BIN C15700,  
7600 Sand Point Way NE., Seattle, WA  
98115-0070. Information relevant to this  
notice has been compiled in aggregate  
form and is available for public review  
during business hours at the same  
address.

**FOR FURTHER INFORMATION CONTACT:**  
Rolland A. Schmitten (Regional  
Director) at 206-526-6150.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon  
fisheries at 50 CFR Part 661 specify at  
§ 661.21(a)(1) that "When a quota for the  
commercial or the recreational fishery,  
or both, for any salmon species in any  
portion of the fishery management area  
is projected by the Regional Director to  
be reached on or by a certain date, the  
Secretary will, by publishing a notice in  
the Federal Register under § 661.23,  
close the commercial or recreational  
fishery, or both, for all salmon species in  
the portion of the fishery management  
area to which the quota applies as of the  
date the quota is projected to be  
reached."

Management measures for 1987 were  
effective on May 1, 1987 (52 FR 17264,  
May 6, 1987). The 1987 recreational  
fishery for all salmon species from Cape  
Falcon, Oregon, to the U.S.-Canada  
border was partitioned into three  
subareas, each with separate subarea  
chinook and coho quotas. The season in  
each subarea began on June 28 and will  
extend through the earliest of the  
following (1) September 24, (2) the  
attainment of a subarea quota, or (3) the  
attainment of an overall commercial-  
recreational chinook quota north of  
Cape Falcon of 106,000 fish.

The commercial fishery north of Cape  
Falcon was closed on July 29, 1987, and  
did not reopen for a scheduled all-  
species season, because it was projected  
that the commercial quota of 61,400  
chinook salmon had been reached (52  
FR 28721, August 3, 1987; 52 FR 29860,  
August 12, 1987). Subsequent landing  
data show that the commercial fishery  
actually harvested 62,230 chinook, 830  
chinook over its preseason quota.

Based on the best available  
information, commercial and  
recreational landings in the area are  
projected to reach the overall 106,000  
chinook quota by midnight, August 19,  
1987. The soonest a federal notice  
closing the fishery could be  
implemented, however, is noon, August  
20, 1987.

Therefore, NOAA issues this notice to  
close the recreational salmon fishery in  
the EEZ from Cape Falcon, Oregon, to  
the U.S.-Canada border effective 1200  
hours, local time, August 20, 1987. This  
notice does not apply to treaty Indian  
fisheries or to other fisheries which may  
be operating in this or other areas.

The Regional Director consulted with  
the Chairman of the Council and  
representatives of WDF and ODFW  
regarding a closure of the recreational  
fisheries between Cape Falcon, Oregon,  
and the U.S.-Canada border. The WDF

and ODFW representatives confirmed  
that Washington and Oregon will close  
the recreational fisheries in state waters  
adjacent to this area of the EEZ as soon  
as possible.

#### Other Matters

This action is authorized by 50 CFR  
661.23 and is in compliance with  
Executive Order 12291.

#### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 20, 1987.

Bill Powell,

Executive Director, National Marine  
Fisheries Service.

[FR Doc. 87-19419 Filed 8-20-87; 12:02 pm]

BILLING CODE 3510-22-M

#### 50 CFR Part 685

[Docket No. 60934-7028]

#### Pelagic Fisheries of the Western Pacific Region; Correction

**AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an  
error in a definition in the regulatory  
text of the final rule to implement the  
Fishery Management Plan for the  
Pelagic Fisheries of the Western Pacific  
Region. This rule was published  
February 27, 1987 (52 FR 5983).

**EFFECTIVE DATE:** March 23, 1987.

**FOR FURTHER INFORMATION CONTACT:**  
Doyle E. Gates (Administrator, Western  
Pacific Program Office, Southwest  
Region, Honolulu, HI), 808-955-8831; or  
Svein Fougner (Chief, Fisheries  
Management and Analysis Branch,  
Southwest Region, Terminal Island, CA),  
213-514-6660.

In rule document 87-4119 beginning on  
page 5983 in the issue of February 27,  
1987, make the following correction:

#### § 685.2 [Corrected]

In § 685.2, under the definition for  
"Vessel of the United States", paragraph  
(d), on page 5988, in the first column,  
fifth line, the word "not" is removed.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 87-19286 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 52, No. 164

Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

#### Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1987-88 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action gives notice of a proposal to establish salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1987-88 crop year, which began July 1, 1987. This action is taken under the marketing order for almonds grown in California and is intended to avoid unreasonable fluctuations in supplies and prices in view of projected record large 1987 almond crop.

**DATE:** Comments must be received by September 9, 1987.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20250-6456; telephone: (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (REA), the

Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds who are subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than \$100,000, and agricultural service firms, which would include handlers, have been defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities. This proposal would require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets 18 percent of merchantable almonds received from growers during the 1987-88 crop year. The remaining 82 percent of the crop could be sold by handlers in any market. Total 1987 crop marketable production is expected to be 570 million kernel weight pounds—the largest crop in history. This compares with a 359 million kernel weight pound average annual production for the last five years (1982 through 1986). Worldwide production for 1987 is also expected to be a record high. Domestic and export trade demand for 1987-88 is estimated at 480 million kernel weight pounds.

Reserve almonds could be released to salable at a later date if it is found that the salable percentage is insufficient to satisfy 1987-88 trade demand, including desirable carryover requirements for use during the 1988-89 crop year (if it appears that the 1988 crop will be insufficient to meet 1988-89 trade

demand needs). Otherwise, reserve almonds would be diverted to secondary outlets such as almond oil or animal feed.

While this rule may restrict the amount of almonds which handlers may sell in normal domestic and export markets, the proposed salable and reserve percentages are needed to lessen the impact of the oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns. Further, this proposed action could provide market stability during the 1988-89 crop year in the event that 1988 production is below trade demand. Given the cyclical tendency of almond production, this is a likely possibility.

Based on the above, the Administrator of the AMS had determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The authority to establish salable, reserve, and export percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". The order is effective under the Act. The proposal is based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board," which was established under the order for the purpose of administering the program.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1987-88 crop year. The Board's 1987 marketable production estimate of 570 million kernel weight pounds is based on its 1987 crop estimate of 600 million kernel weight pounds, minus an estimated weight loss of 30 million kernel weight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 480 million kernel weight pounds—160 million pounds for domestic needs and 320 million kernel weight pounds for

export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1986-87 marketing year and for supplies deemed desirable to be carried out on June 30, 1988, for early season shipment during the 1988-89 crop year until the 1988 crop is available for market. After adjusting for inventory, the trade demand is calculated at 467.4 million kernel weight pounds, the quantity of almonds from the estimated 1987 marketable production necessary for trade demand needs. The proposed salable percentage of 82 percent would meet those needs.

The remaining 18 percent (102.6 million kernel weight pounds) of the 1987 crop marketable production would be withheld by handlers to meet their reserve obligations. All or part of these almonds could be released to salable if it is found that the salable supply made available by the 82 percent salable percentage is insufficient to satisfy 1987-88 trade demand, including desirable carryover requirements for use during the 1988-89 crop year. The Board is required to make any recommendation to the Secretary to increase the salable percentage prior to May 15, 1988. Alternatively, reserve almonds would be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1987-88 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve would be eligible for export to normal export outlets. Thus, an export percentage of 0 percent is proposed.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1987 CROP  
[Kernel Weight Basis]

	Million lbs.	Per- cent
Estimated Production:		
1. 1987 Production.....	600.0	
2. Loss and Exempt—5.0 percent.....	30.0	
3. Marketable Production.....	570.0	
Estimated Trade Demand:		
4. Domestic.....	160.0	

MARKETING POLICY ESTIMATES—1987 CROP—  
Continued  
[Kernel Weight Basis]

	Million lbs.	Per- cent
5. Export.....	320.0	
6. Total.....	480.0	
Inventory Adjustment:		
7. Carryin 7/1/87.....	76.2	
8. Desirable Carryover 8/30/88.....	63.6	
9. Adjustment.....	(12.6)	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9).....	467.4	
11. Reserve (Item 3 minus item 10).....	102.6	
12. Salable percent (Item 10 ÷ item 3 x 100).....		82
13. Reserve percent (100% minus item 12).....		18

This proposed action would help avoid unreasonable fluctuations in supplies and prices as the industry faces its largest crop in history. The projected 1987 crop of 570 million marketable kernel weight pounds would be 141.8 percent larger than last year's 235.7 million kernel weight pound crop and 1.1 percent larger than the 1984 previous record crop of 563.6 million kernel weight pounds. World production if forecast by the Board at 819.1 million kernel weight pounds—7.0 percent larger than the 1984 previous record of 765.4 million kernel weight pounds.

This proposed action would provide an estimated 543.6 million kernel weight pounds of California almonds for unrestricted sales (1987 crop salable production plus carryin from the 1986 crop) to meet increasing domestic and world almond consumption. This amount exceeds the actual 1984-85 record for delivered sales of California almonds by 12.7 percent.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered adequate because the current crop year to which the proposed percentages would be applicable began on July 1, 1987. Late summer and early fall are usually active times for almond sales. Handlers and buyers should know as soon as possible the extent to which volume regulation will be put into effect this crop year.

#### List of Subjects in 7 CFR Part 981

Marketing agreements and orders,  
Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674

#### Subpart—Salable, Reserve, and Export Percentages

2. Add a new subpart consisting of § 981.235 to read as follows:

§ 981.235 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1987.

The salable, reserve, and export percentages during the crop year beginning July 1, 1987, shall be 82 percent, 18 percent, and 0 percent, respectively.

Dated: August 20, 1987.

Ronald L. Cioffi,

Acting Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 87-19497 Filed 8-21-87; 10:25 am]

BILLING CODE 3410-02-M

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 125

#### Procurement Automated Source System

AGENCY: Small Business Administration.

ACTION: Proposed rule.

**SUMMARY:** By this action, the Small Business Administration (SBA) is proposing to redesignate a subsection of Part 125 relating to the Procurement Automated Source System (PASS) as a separate section and to establish a schedule of fees for services provided in conjunction with PASS.

**DATES:** Comments must be submitted on or before September 24, 1987.

**ADDRESSES:** Comments should be submitted to John H. Barnett, Special Assistant to the Associate Administrator for Procurement Assistance, 1441 L Street, NW., Room 600, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** John H. Barnett, (202) 653-6635.

**SUPPLEMENTARY INFORMATION:** Under current procedures, the Small Business Administration maintains a Procurement Automated Source System (PASS) through a private contractor and allows small and large businesses and Government agencies direct access to the system. Presently SBA charges direct access users only \$24 an hour for on-line time.

Because direct access PASS users receive a valuable benefit and the System is expensive to operate, the SBA is proposing to establish a schedule of fees that is more reflective of the cost and value of on-line PASS use in § 125.10(b). If published as a final rule,

the schedule would charge non-SBA PASS users \$50 per hour. The rate of \$50 per hour is supported by a recent cost analyses of PASS time. There would also be a charge for extraneous copies of the PASS User Guide and other specific sources.

With implementation of a fee schedule, the private contractor would be responsible for billing direct access users monthly. Direct access users included commercial firms and Government agencies (excluding SBA offices).

**Compliance With Executive Order 12291, The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and The Paperwork Reduction Act (44 U.S.C. ch. 35)**

**Executive Order 12291**

For the purposes of E.O. 12291, SBA has determined that this proposed rule is not a major rule because, if promulgated in final form, it will not have an annual effect on the economy of \$100 million or more; or cause a major increase in costs for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

**Regulatory Flexibility Act**

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities. The vast majority of entities potentially affected by this proposed rule would not be considered small for purposes of the Regulatory Flexibility Act.

**Paperwork Reduction Act**

This proposed rule, if adopted in final form, would not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35.

**List of Subjects in 13 CFR Part 125**

Government procurement, Small business, Technical assistance.

For the reasons set forth above, Title 13, Part 125 of the Code of Federal Regulations, is amended as follows:

**PART 125—[AMENDED]**

1. The authority citation for Part 125 is revised to read as follows:

**Authority:** Secs. 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended

(15 U.S.C. 631, *et seq.*; 31 U.S.C. 9701, 9702, 96 Stat. 1051).

**§ 125.10 [Redesignated as § 125.11]**

2. Section 125.10 is redesignated as § 125.11.

**§ 125.10 [Redesignated from § 125.9(i) and Amended]**

3. Section § 125.9(i) is redesignated as § 125.10, *Procurement Automated Source System (PASS)* and amended by redesignating the third through ninth sentences as paragraph (a) "Inclusion in PASS." and by adding a new paragraph (b) to read as follows:

**(b) Access to PASS.**

Large commercial firms and Government agencies that provide substantial prime contracting and/or subcontracting opportunities to small business firms may be provided direct access to PASS if they so desire. All those with direct access to PASS (PASS users) will receive an identification number and will be charged a minimum of one hour of usage each month (\$50). Additional hours of use and fractions thereof will cost \$50 per hour. All users will be billed monthly, and all fees will be paid directly to the private contractor selected by SBA to operate PASS. The contractor will bill SBA on a monthly basis for operation of PASS in accordance with the current contract provisions minus any fees it collects from non-SBA users. Each PASS ID number entitles a direct access user to two PASS User Guides to no charge. Additional copies of the User Guides and copies for anyone without an ID can be purchased from SBA or the contractor for \$25 each. The on-line usage fee, User Guide fee and any other related fee may be changed by SBA from time to time as required to reflect increased costs. Any fee change will be effective upon publication of a notice in the Federal Register.

Dated: July 28, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-19374 Filed 8-24-87; 8:45 am]

BILLING CODE 8025-01-M

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 239 and 274**

[Release Nos. 33-6730; IC-15932; File No. S7-30-87]

**Consolidated Disclosure of Mutual Fund Expenses**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed form amendments.

**SUMMARY:** The Commission is reproposing for comment revisions to the expense-related disclosure requirements of the registration form used by open-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933, and is publishing revisions to the staff guidelines accompanying the form. The proposed amendments would consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is proposing these amendments to improve the quality of expense disclosures in mutual fund prospectuses.

**DATE:** Comments on the proposed amendments should be received on or before October 8, 1987.

**ADDRESS:** Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-30-87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** John McGuire, Attorney, or Robert E. Plaze, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is publishing for comment proposed revisions to Form N-1A (17 CFR 239.15A), the registration form under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "1940 Act") and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for open-end management investment companies ("funds"), and the guidelines that accompany the form. Under this proposal ("Reproposal"), a tabular presentation of expenses ("fee table") would be presented as part of the synopsis at the beginning of the prospectus. The fee table would reflect both the one-time fees paid directly by the shareholder, such as an initial or deferred sales load, and the recurring expenses paid from fund assets or deducted from shareholder accounts.

<sup>1</sup> The Commission initially proposed similar revisions to Form N-1A in Investment Company Act Rel. No. 14230 (Nov. 9, 1984) (49 FR 45171 (Nov. 15, 1984)) ("Release No. 14230").

The table would also show the effect of these fees on a hypothetical investment. In addition, the Commission is proposing amendments to Form N-1A to improve the narrative disclosure of the fees deducted under, and the nature of, distribution plans.<sup>2</sup>

Finally, the Commission is publishing proposed revisions to Guide 29 and Guide 33 of the guidelines to Form N-1A. Guide 29 provides guidance as to the requirements for full disclosure of distribution expenses, and Guide 33 provides guidance in preparing the synopsis. Although notice and comment are not required for staff guidelines, comments received regarding the revisions will be considered in developing final guidelines.

## I. Background

On November 9, 1984, the Commission published for comment proposed revisions to Form N-1A ("Proposal").<sup>3</sup> The Proposal was designed to consolidate all of the narrative information in the prospectus concerning significant fund expenses and add a fee table. The Proposal was prompted by the Commission's concern that the wide variety of sales loads and other fund distribution arrangements could, unless uniformly presented, confuse investors. The fee table was intended to present fund investors with expense disclosure that could be understood easily and would facilitate comparison of expenses among funds.

The Commission received a number of highly critical comments from representatives of the mutual fund industry in response to the Proposal. Several commenters argued that the Proposal required a level of detail regarding expenses that conflicted with the objectives of simplicity and clarity sought by the Commission when it adopted Form N-1A. These commenters further claimed that a uniform table setting out expense-related data would suggest a degree of comparability that

was inherently misleading.<sup>4</sup> Since then, however, representatives of the mutual fund industry have reconsidered their opposition to the fee table concept and now acknowledge the usefulness of such expense disclosure.<sup>5</sup> Also, the Commission received over 1,000 letters from investors who urged the Commission to adopt a fee table because it would be useful in making investment decisions. To facilitate full disclosure of mutual fund expenses, the Commission is reproposing the fee table in a revised form that addresses many of the commenters' concerns.

## II. Discussion

### A. The Fee Table

As originally proposed, the fee table would have consisted of three defined expense categories (advisory fees, distribution expenses, and shareholder servicing expenses) and two other expense categories (other expenses and total expenses), each expressed as a percentage of average net assets held by the fund during the prior fiscal year, and would have included the names of the principal payees. Commenters, however, expressed concern that the categories in the proposed table were too rigid, inappropriate for certain funds, and could potentially mislead investors.

After considering these comments, the Commission is reproposing an extensively revised fee table. The fee table would separately reflect both recurring and nonrecurring expenses, would demonstrate the effect of these expenses on a hypothetical investment, and would include a brief narrative explaining the table and providing cross-references. Under the Reproposal, the expense categories would better reflect the types of expenses common to most funds, thus facilitating the comparison of fund expenses. The categories are intended, however, to be flexible enough so that the table is adaptable to each fund's unique types of expenses.<sup>6</sup>

The Proposal would have permitted the fee table to be placed anywhere in the prospectus. The Reproposal, however, would require the fee table to be located near the front of the prospectus, as part of the synopsis if there is one.<sup>7</sup> This is an appropriate location for the fee table because it provides, in a tabular form, a synopsis of the expenses of a fund. This would also place the fee table close to the Condensed Financial Information ("per share table"), thus displaying most of the essential comparative data together.

### 1. Nonrecurring Expenses

The first portion of the table would list nonrecurring shareholder expenses. These expenses include the maximum sales load that could be imposed at the time of purchase or redemption (including any contingent deferred sales load ("CDSL")), any redemption fee, and any exchange fee.<sup>8</sup> If the fund has scheduled variations in any deferred sales loads or exchange fees, the fund, in addition to listing the maximum charge, may include the range of charges in the table. The Reproposal would not permit funds to include in the fee table the scheduled variations of the sales load imposed at the time of purchase ("front-end load"), although such variations could be discussed in the brief narrative following the table. Comment is requested as to whether the table itself should also permit disclosure of the scheduled variations of any front-end load.<sup>9</sup>

### 2. Recurring Expenses

The second portion of the table would list all recurring expenses incurred by the fund or its shareholders. These expenses would be presented in three different categories: (1) Management fees, (2) 12b-1 fees,<sup>10</sup> and (3) all other

all narrative expense disclosure at one location within the prospectus.

<sup>7</sup> The inclusion of a synopsis is currently dependent upon the length and complexity of the prospectus. The Reproposal would require that the fee table be included in all fund prospectuses.

<sup>8</sup> Because these expenses may be based on a dollar amount or on a percentage of the purchase or redemption price, the proposed amendments to Form N-1A would require that the basis of each expense (e.g., Maximum Sales Load as a percentage of purchase price) be set out in the captions of the table.

<sup>9</sup> Item 7(b)(iii) of Form N-1A requires disclosure of any scheduled variations of front-end loads in the text of the prospectus.

<sup>10</sup> The Proposal would have required funds to group all distribution expenses together, including those incurred under a Rule 12b-1 plan, paid from CDSLs, or paid from a sales load deducted from payments. See Release No. 14230, *supra* note 1.

<sup>2</sup> A "distribution plan" is a plan adopted pursuant to Rule 12b-1 (17 CFR 270.12b-1) under the 1940 Act to provide for the use of fund assets to finance activities intended primarily to result in the sale and distribution of fund shares ("Rule 12b-1 plan"). Rule 12b-1 imposes various procedural and substantive requirements on funds adopting a Rule 12b-1 plan including: (1) the plan must be in writing and must describe all material aspects of the proposed financing of distribution; (2) the plan must be initially approved by a majority of the outstanding voting securities, directors, and directors who are not interested persons of the fund ("disinterested directors"); (3) the plan cannot continue for more than one year unless re-approved by the directors and disinterested directors; and (4) the plan must be terminable at any time, without penalty, by a vote of the disinterested directors or of the shareholders on not more than sixty days written notice.

<sup>3</sup> Release No. 14230, *supra* note 1.

<sup>4</sup> See Letter from the Investment Company Institute to John Wheeler, Secretary, Securities and Exchange Commission (Jan. 14, 1985) ("[T]his entire item is redundant . . . and . . . would infer a degree of comparability that would be inherently misleading.") included in File No. S7-34-84.

<sup>5</sup> See Statement of the Investment Company Institute Regarding the Operation of Rule 12b-1 Plans, at 37 (Aug. 6, 1986) ("[T]he Institute agrees with the Division that a unified format for disclosure of the costs of mutual fund investments would be useful to investors.") included in File No. S7-34-84.

<sup>6</sup> As noted *supra*, the Proposal would also have consolidated narrative disclosure. Because the fee table would consolidate fund expense data and provide cross-references to further narrative disclosures in the text of the prospectus, the Commission is not reproposing the consolidation of

expenses, and the total of all recurring expenses, each listed as a percentage of average net assets during the fund's most recent fiscal year. Management fees include investment advisory fees as well as any other recurring management or administrative fees paid to the adviser or its affiliates.<sup>11</sup> The "12b-1 fees" category includes only those distribution and other expenses incurred under a Rule 12b-1 plan.<sup>12</sup>

(a) *Other Expenses.* The "Other Expenses" category of the fee table would list the total of all recurring expenses not included in the other two categories.<sup>13</sup> Recurring expenses listed in this category include expenses deducted from fund assets as well as those deducted from all shareholder accounts.<sup>14</sup> The inclusion of all expenses in the table would enable investors to compare expenses associated with investing in funds regardless of how they are deducted.<sup>15</sup> This category could, under the Reproposal, be divided into as many as three subcategories captioned in any manner the fund chooses, as long as the three subcategories equal the total "Other Expenses."

By proposing to permit the "Other Expenses" category to be divided into three subcategories, each fund would have the flexibility to disclose expenses in the manner most appropriate for it, while keeping the fee table relatively concise. Comment is requested as to whether subdividing "Other Expenses" into subcategories would enhance disclosure of these expenses or would, instead, complicate the fee table, and whether there should be a three-subcategory limitation.

(b) *Subtotal.* One commenter proposed that the fee table include a subtotal of all recurring expenses except

12b-1 fees, suggesting that this number would facilitate comparisons of non-distribution expenses between funds having Rule 12b-1 plans and funds without such plans. The Commission has not included such a subtotal in the Reproposal, believing that disclosure of the separate expense items is sufficient, but requests comment specifically as to whether the fee table should include a subtotal of management fees and other fees.

(c) *Restated Expenses.* The Proposal would have required a footnote to the table explaining that the expense information would not be indicative of future expenses if the fund knew that a change had occurred in fund expenses that would diminish the comparative value of the table's expense information. Under the reproposal, funds would be required to restate the historical expense information, in a separate column, using the current fees that would have been applicable had they been in effect during the previous fiscal year. A fund would have to restate its expenses only if the fee table was affected materially by a change in a fee.<sup>16</sup> The narrative following the table would explain that information in the second column reflects current fees and provide cross-references to further explanation in the text of the prospectus. The Commission is proposing to require a restatement of expense information because it would provide more effective disclosure and permit more meaningful comparisons of expenses that investors will likely bear.

The Commission also is considering and seeks comment on two alternative ways of disclosing changes in fees. The first would require a fund to restate its historical expense information to reflect current fees, but omit the historical expense information based on fees charged during the previous fiscal year. This would have the benefit of making the table more concise by eliminating a column of expense information of mostly historical rather than comparative value. The second alternative would require a fund to disclose in the narrative that there has been a change in the fees and provide cross-references to further explanation

in the prospectus, but would not require any expense information to be restated. This alternative would maintain absolute uniformity of historical fee disclosure among different funds, but may not provide the most useful comparative information. Comment is invited as to the costs and benefits of the proposed amendment and each of the two alternatives.

### 3. Effect on Expenses on Hypothetical Investment

The Commission in proposing a third section of the fee table to illustrate the effect of fund expenses on a hypothetical \$1,000 investment over one, three, five, and ten year periods.<sup>17</sup> The table is intended to, among other things discussed below, provide a relatively simple means for investors to compare expense levels of different funds in a manner that reflects all expenses, both recurring and non-recurring, regardless of the method of calculating the expenses.<sup>18</sup>

This part of the table would contain three columns of information each of which is intended to convey different information. The Commission requests comment on the usefulness of the information in each column, the competitive effects of the assumptions each column requires, and whether any additional columns of information might be warranted.

The first column assumes a zero percent return and is intended to inform investors of the amount their investment must grow to recoup sales loads and fund expenses so as to provide investors with a greater understanding of the effect of expenses on an investment in the fund. One weakness of the zero growth assumption, however, is that it may understate the effect of asset-based charges (such as advisory fees and Rule 12b-1 fees) that increase (in dollar amounts) as the value of an investment increases. Therefore, the Commission is proposing a second column that demonstrates the effect of expenses assuming a five percent return on fund assets. This column will reflect the

<sup>17</sup> Prospectuses for variable life insurance contracts include tables showing how contract values can change over time at the hypothetical gross investment rates of 0%, 4%, and 8%; or 0%, 6%, and 12%.

<sup>18</sup> While all recurring expenses can be shown as a percentage of the average net assets, non-recurring expenses are often based on a fixed dollar amount or on a percentage of purchase price or redemption proceeds, which makes them difficult to compare. More importantly, it is difficult for investors to compare expenses levels of funds that deduct certain expenses (e.g., distribution expenses) through a non-recurring charge (e.g., sales load) with those that deduct the same expense through a recurring charge (e.g., 12b-1 fee).

<sup>11</sup> Under the Reproposal, a fund may alternatively list the administrative portion of those fees separately under "Other Expenses."

<sup>12</sup> If a fund deducts distribution expenses from fund assets other than under a Rule 12b-1 plan, i.e., under a Commission exemptive order, it may list these expenses under an appropriately re-captioned item for 12b-1 fees, or it may list the expense as a subcategory of "Other Expenses," described *infra*.

<sup>13</sup> The instructions to the table would preclude any single fee from being included in more than one expense category listed in the table.

<sup>14</sup> Expenses that are not deducted from all accounts would be excluded. These include expense charges applicable to only some shareholders (e.g., Individual Retirement Account trustee fees).

<sup>15</sup> This is the approach the Commission has taken with respect to the deduction of fund expenses in the calculation of fund performance. See Instruction 1(b) of Item 3(c) of Form N-1A (calculation of money market fund yield). See also Instruction 6 to proposed Item 22(b)(i)(a) (calculation of income fund yield) and Instruction 4 to proposed Item 22(b)(ii) (calculation of total return). Investment Company Act Rel. No. 15315 (Sept. 17, 1986) (15 FR 34384 (Sept. 28, 1986)).

<sup>16</sup> Proposed Instruction 4 to the fee table would require a restatement of expenses only if the fee table would be materially changed, not if a particular fee was increased or decreased materially with no material effect on the table. For example, if the annual transfer agent servicing fee was increased from \$5 to \$7 per account, such an increase would be a material change, but it may not materially affect the table. If any information is restated, the "Total Expenses" category would have to be restated since it must equal the total of recurring expenses.

effect of increasing asset-based fees but, unlike the first column, it would not be itself isolate the amount of growth on an investment necessary to compensate for fund expenses. Furthermore, it uses an arbitrary growth rate assumption that may suggest a projected return to some investors.<sup>19</sup> The five percent rate was chosen as a rate sufficiently conservative to discourage its use as a table of projections, but as a rate sufficiently high to demonstrate the impact of fund growth on asset-based changes. Comment is requested as to whether the assumed rates of return are appropriate and the basis for selecting any positive rate of return.

The third column demonstrates what the investment would be worth, assuming a five percent return, if there were no expenses. Columns two and three, when compared, demonstrate the cost of an investment and the amount of growth necessary to recoup expenses in a manner similar to that of column one. Comment is requested as to whether this column of information is necessary in light of the information provided in the first column, or whether the first column is necessary in light of this third column of information.<sup>20</sup>

#### 4. Explanation of the Table

The Reproposal would also require a brief narrative immediately following the table explaining the purpose of the fee table and providing cross-references to additional textual disclosure in the prospectus. The narrative should include any other information necessary for an investor's understanding of the disclosures in the table.

#### B. Narrative Distribution Expense Disclosures

Since the adoption of Rule 12b-1, both the number of funds adopting Rule 12b-1 plans and the variety of methods of financing distribution through Rule 12b-1 plans have increased.<sup>21</sup> For example,

under some plans a fund pays its distributor a fee based on the fund's daily average net assets, regardless of the distribution expenses actually incurred. Under other plans a fund reimburses its distributor for all distribution expenses actually incurred up to a certain amount. Under the latter type of plan, if the amount spent by the distributor in any one plan year exceeds the plan's annual ceiling on such expenses, that excess amount of expense is carried over by the fund to be reimbursed in the future. Some plans provide for joint distribution arrangements among affiliated funds having Rule 12b-1 plans. In these cases, funds agree to share in certain distribution activities and allocate the expense between the participants. In response to requests by the staff, funds currently disclose in their prospectuses these and other aspects of their Rule 12b-1 plans. The Commission is now proposing amendments to Form N-1A to clarify the minimum disclosure obligations of funds regarding Rule 12b-1 plans.

#### 1. Prospectus

Funds adopting Rule 12b-1 plans are currently required to disclose in the prospectus the existence of the plan and list the various activities for which payments are made under the plan.<sup>22</sup> The Reproposal would expand the required disclosure beyond the listing of expenses by amending Item 7 to require a brief description of the plan, including whether the plan would permit, and whether there exists, an amount of distribution expenses carried over from one plan year to another ("carryover amount"). If there is any carryover amount, the amount and the ratio of the carryover amount to net assets on the last day of the previous plan year must be disclosed. The latter figure will allow investors to assess the relative size of any unreimbursed amounts.<sup>23</sup> In addition, the Reproposal would require the prospectus to disclose whether the amount of distribution payments, when combined with any sales load, could exceed the amount of sales load allowed to be deducted under applicable NASD limitations.<sup>24</sup>

<sup>19</sup> See Item 7 of Form N-1A.

<sup>20</sup> Disclosure of the carried-over distribution expenses as a ratio to net assets is similar to the fee table, which would disclose Rule 12b-1 fees and other recurring expenses as a percentage of average net assets.

<sup>21</sup> Art. III, sec. 26 of the NASD Rules of Fair Practice (adopted pursuant to authority under section 22(d) of the 1940 Act (15 U.S.C. 80a-22(d))).

If the fund participates in any joint distribution activities paid from amounts deducted from fund assets under a Rule 12b-1 plan, the Reproposal would require disclosure of the participation and that 12b-1 fees paid by one fund or series might be used to pay for the distribution expenses of another fund or series. Disclosure would also be required from the methods by which the participants in the joint distribution activities allocate the cost of such activities (e.g., by the number of investor accounts).<sup>25</sup>

Item 7 of Form N-1A currently requires disclosure of any sales load reallocated to a dealer to notify investors of my potential conflict of interest the dealer recommending the shares may have. The Reproposal would amend Item 7 to similarly require disclosure of any continuing fees ("trail fees") received by a dealer or any person advising investors that are paid out of fund assets. These fees are usually funded by 12b-1 fees and would not otherwise be required to be disclosed by Item 7.

Guide 29 of the Staff Guidelines would be amended to provide additional clarification of those aspects of a Rule 12b-1 plan that should be disclosed to fulfill the disclosure requirements of Item 7. These disclosures include such matters as a discussion of the relationships between amounts paid to an underwriter and expenses actually incurred by the underwriter (e.g., whether the plan reimburses the distributor only for actual expenses incurred or whether the distributor's compensation is based on the fund's average daily net assets or some other factor, regardless of the amount of expenses incurred); whether the fund is or can be charged for interest, carrying, or any other financing charges on any unreimbursed distribution expense incurred in a prior plan year; whether the fund considers itself under a legal obligation to pay all or part of any amount carried over; and the estimated amount of time it will take for the fund to pay all carryover expenses.

#### 2. Statement of Additional Information

Under the Reproposal, the distribution plan disclosures in the Statement of Additional Information ("SAI") would also be expanded and clarified. Currently, Item 16 of the SAI requires a summary of the material aspects of any

<sup>22</sup> In proposing to require disclosure of joint distribution arrangements, the Commission makes no statement as to the legality of such arrangements under section 17(d) of the 1940 Act (15 U.S.C. 80a-17(d)) and Rule 17d-1 thereunder (17 CFR 270.13d-1) without a Commission order.

<sup>19</sup> To avoid the possibility that these hypothetical numbers might be viewed as projections of fund growth and that investors might be misled, the Reproposal would require that prominent disclosure accompany the table stating that the rate of return is only hypothetical and that the actual rate of return could be higher or lower.

<sup>20</sup> To complete the table, proposed instruction 10 sets out certain assumptions and guidelines. Comment is requested as to whether this instruction is sufficient to allow funds to compute the data required by the table, and what additional assumptions might be necessary to reflect fund operating expenses that will vary from year-to-year and are not measured as a percentage of net assets and that, in the case of new funds, may be subsidized by the fund's adviser for a period of time.

<sup>21</sup> Approximately 925 of 2200 funds have adopted Rule 12b-1 plans.

distribution plan and the manner in which distribution fees are spent. The Reproposal would clarify that, in addition to disclosing the manner in which distribution fees are spent for different activities, the SAI must disclose the dollar amount spent in the last fiscal year for each of these different activities. In addition, this item would be expanded to list carryover financing charges as among those Rule 12b-1 plan expenses required to be disclosed. In recognition of the expanded disclosure required, Item 16(a) would be revised to require a "detailed description" of the distribution plan.

### III. Cost/Benefit Analysis

The Commission believes that the changes proposed today would significantly improve the quality of prospectus disclosure without adding appreciably to the cost or burden of the disclosure. Investors would be able to determine quickly and easily the costs associated with an investment and thus would be able to make more informed investment decisions. Funds would only be required to disclose information that is already available to them. To minimize burdens, the Commission proposes to permit funds to delay amending their registration statements until they file their next post-effective amendment.

The Commission invites specific comments on its assessments of the costs and benefits associated with the Reproposal, including estimates of any costs and benefits perceived by commenters.

### IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objectives of the proposed amendments are to present fund investors with expense disclosure that

can be more easily understood, will facilitate comparison of expenses among funds, and clarify the nature of expenses associated with Rule 12b-1 plans. The Analysis indicates that if adopted no substantial additional burden should be imposed on funds constituting small entities because the information needed to complete the fee table and required to be disclosed is readily available to funds. The Analysis also notes that the burden placed upon small entities as a result of requiring funds to show the effect of expenses on a hypothetical investment will be minor because it requires relatively simple calculations. Other appropriate cost-benefit information reflected in the section of this release titled "Cost/Benefit Analysis" is also reflected in the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting John McGuire, Mail, Stop 5-2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

### List of Subjects in 17 CFR Parts 239 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of Proposed Form Changes

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

#### PART 239—[AMENDED]

#### PART 274—[AMENDED]

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, \* \* \*

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, \* \* \*

3. By amending General Instructions of Parts A and B, 1(b) and 4(a), of

General Instruction G of Form N-1A described in §§ 239.15A and 274.11A to read as follows:

#### General Instructions for Parts A and B.

\* \* \* \* \*

1(b). Item 3 of part A, "Condensed Financial Information," should not be further back in the prospectus than the fifth page thereof.

\* \* \* \* \*

4(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Item 3.

\* \* \* \* \*

4. By proposing to redesignate current paragraphs (a) and (b) of Item 2 as (b) and (c), add a new paragraph (a) to Item 2, and revise redesignated paragraph (b) as follows:

#### Item 2. Synopsis.

(a) Include a table, located within two pages of the cover page, furnishing the following information, using the captions provided, in the format illustrated below:

#### Nonrecurring Shareholder Expenses

1. Maximum Sales Load Imposed on Purchases (as a percentage of offering price)
2. Deferred Sales Load (as percentage of original purchase price or redemption proceeds, as applicable)
3. Redemption Fees (as a percentage of amount redeemed, if applicable)
4. Exchange Fee

#### Recurring Fund Expenses During The Past Fiscal Year

(as a percentage of average net assets)

1. Management Fees
2. 12b-1 Fees
3. Other Expenses
4. Total Expenses

#### Effect of Expenses on a Hypothetical Investment

If you redeem at the end of:	And the annual rate of return on the assets of the fund is 0%, the redeemable value of your investment would be:	And if the annual rate of return is 5%	
		The redeemable value of your investment would be:	But if there were no (sales load or) fund expenses, the redeemable value would be:
1 year.....	\$.....	\$.....	\$1,050.00
3 years.....	\$.....	\$.....	\$1,157.62
5 years.....	\$.....	\$.....	\$1,276.28
10 years.....	\$.....	\$.....	\$1,628.89

#### Instructions:

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant

sections of the prospectus for more complete descriptions of the various costs and expenses.

2. If a particular caption is not applicable to the Registrant, omit the caption from the table.

3. If the Registrant has been in existence for a full fiscal year, the percentages in the

table should be based on amounts spent in the most recent fiscal year. If the Registrant has not been in operation for a full fiscal year, briefly describe the basis on which payments will be made.

4. If there have been any changes in the fees that would materially affect the information disclosed in the table: (a) Restate

the expense information, in a separate column, using the current fees that would have been applicable had they been in effect during the previous fiscal year; and (b) disclose in the narrative following the table, that the expense information has been restated in the second column to reflect current fees.

5. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads.

6. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Registrant to another investment company or from one series of the Registrant to another, and may include a tabular presentation, within the larger table, of the range of exchange fees.

7. "Management Fees" include investment advisory fees, any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "other expenses."

8. "Rule 12b-1 Fees" include all distribution or other expenses incurred under a plan adopted pursuant to Rule 12b-1 under the 1940 Act. Disclose the amount of any distribution or other expenses deducted from assets other than under a Rule 12b-1 plan under an appropriate caption or under a subheading of the general caption "Other Expenses."

9. "Other Expenses" include all fees (except nonrecurring account fees, sales loads, management fees, or Rule 12b-1 fees) that are deducted from fund assets or are charged to all shareholder accounts. The Registrant may subdivide this heading into no more than three subcategories of the Registrant's choosing, but must include a total of all "other expenses."

10. For purposes of completing the portion of the table demonstrating the effect of expenses on a hypothetical investment:

(a) Assume a rate of return on the assets of the Registrant before expenses (but not before brokerage and other capital items);

(b) For the purpose of any breakpoint in any fee, assume that the amount of Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(c) Assume reinvestment of all dividends and distributions;

(d) Reflect recurring and nonrecurring fees charged to all investors (Registrants that charge a sales load on the reinvestment of dividends should not reflect these fees in the table, but should explain in the brief narrative following the table that the table does not reflect these amounts and that the hypothetical amounts would be reduced if they were reflected.) and assume no exchanges;

(e) Reflect any contingent deferred sales load by assuming redemption on the last day of the year; and

(f) Prominently disclose that the hypothetical investment rate of return is illustrative only and should not be considered a representation of past or future investment rates of return and that actual rates of return may be more or less than the rate shown.

11. If the Registrant is a series company, list separately the data for each series or class.

(b) The Registrant should include a synopsis of the information contained in the prospectus where the length or complexity of the prospectus makes such a synopsis appropriate. (If the prospectus without a synopsis would be twelve pages or less when printed in the manner in which it is to be delivered to investors, a synopsis, with the exception of the table required in paragraph (a) above, should not normally be necessary).

5. By proposing to amend paragraph (d) by deleting the word "and" after the semicolon and revising paragraph (e) and adding new paragraph (f) to Item 7 as follows:

Item 7. *Purchase of Securities Being Offered.*

(e) the amount or rate of any continuing fee paid out of fund assets to any dealer or any persons who may be advising shareholders regarding the purchase, sale, or retention of fund shares ("trail fee"); and

(f) if the Registrant directly or indirectly pays distribution or other expenses pursuant to a plan adopted under Rule 12b-1 under the 1940 Act [17 CFR 270.12b-1] (i) a brief description of the plan; (ii) a listing of the principal types of activities for which payments are or will be made; (iii) a statement of the amount of any unreimbursed expenses incurred in a previous plan year and carried over to future plan years, in terms of dollars and as a percentage of average net assets of the Fund on the last day of the previous plan year; (iv) an explanation of whether or not, based on current level of payments, the total payments for distribution, including any contingent deferred sales charge, over the life of an investment could exceed the maximum amount (8½%) that could have been charged as a sales load deducted from payments. If the Registrant participates in any joint distribution activities with another fund, or if a series of the Registrant participates in joint distribution activities with other series, disclose that a 12b-1 fee paid by one series or fund may be used to finance distribution of the shares of another series or fund and the method by which distribution costs will be allocated.

6. By proposing to revise paragraphs (f) and (f)(i), redesignate current subparagraph (f)(i)(F) as (f)(i)(G) of Item 16 and add a new paragraph (f)(i)(F) as follows:

Item 16. *Investment Advisory and Other Services.*

(f) Furnish a detailed description of the material aspects of any plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The description should include, among other information, the following:

(i) The dollar amount and the manner in which amounts paid by the Registrant under

the plan during the last fiscal year were spent on:

(A) \* \* \*

(F) interest, carrying, or other financing charges, and

7. By revising Guide 29 of the Guidelines as follows:

Guide 29. *Distribution Expenses.*

Item 7 requires a Registrant that bears distribution or other expenses in accordance with Rule 12b-1 to briefly describe the plan in the prospectus. To comply with this item, the brief description of the Rule 12b-1 plan should include: A discussion of the relationships between amounts paid to an underwriter and expenses actually incurred by the underwriter (e.g., whether the plan reimburses the distributor only for actual expenses incurred or whether the distributor's compensation is based on the fund's average daily net assets or some other factor, regardless of the amount of expenses incurred); whether the fund is or can be charged for interest, carrying, or any other financing charges on any unreimbursed distribution or other expense incurred in a prior plan year; whether the fund considers itself under a legal obligation to pay all or part of the amount carried over; and the estimated amount of time it will take, based on the fund's current asset size, for the fund to pay all carryover expenses.

When special arrangements will be made to sell shares of the fund to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the fund, if these issues are resolved adversely, should also be discussed.

8. By amending the first paragraph of Guide 33 of the Guidelines by revising the first sentence and adding a footnote at the end of the first sentence as follows:

Guide 33. *The Synopsis.*

If the registrant determines that inclusion of a synopsis is appropriate because of the length or complexity of the prospectus, that synopsis should be a clear and concise description of the key features of the offering and the registrant.<sup>44</sup> \* \* \*

August 18, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19293 Filed 8-24-87; 8:45 am]

BILLING CODE 8010-01-M

<sup>44</sup> The table required by item 2(a) should, in all cases, be included in the prospectus.

# DELAWARE RIVER BASIN COMMISSION

## 18 CFR Part 410

### Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule and Public Hearing

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Proposed rule and public hearing.

**SUMMARY:** Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The hearing will be part of the Commission's regular business meeting which is open to the public.

**DATES:** The public hearing is scheduled for Wednesday, October 28, 1987 beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. The comment closing date will be determined at the hearing.

**ADDRESSES:** Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission; Telephone (609) 883-9500.

#### SUPPLEMENTARY INFORMATION

#### Background and Rationale

The installation of water-saving fixtures and fittings can save substantial quantities of water. About two-thirds of the interior residential use of water is for water closet (toilet) flushing and bathing and, in many cases, use of water-saving fixtures and fittings can cut this use in half. Of particular significance, use of such devices entails no change in personal habits.

A number of national associations have endorsed the use of water-saving fixtures and fittings. Both the Building Officials and Code Administrators International (BOCA) and the National Association of Plumbing-Heating-Cooling Contractors incorporate water conservation principles in their model plumbing codes.

Recognizing the benefits associated with the use of water-saving fixtures

and fittings, the Commission's Water Conservation Advisory Committee recommended on April 10, 1987 that the Commission adopt a set of water conservation performance standards for plumbing fixtures and fittings that would apply in the Delaware River Basin.

The proposed amendment would require that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates are specified as are certain specialized fixtures and fittings not covered by the proposed regulation. The proposal also requires certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. Periodic review of the performance standards would also be required to allow for incorporation of more stringent water conservation performance standards as technology advances. Finally, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with standards proposed herein have been adopted within their area of jurisdiction.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.

#### List of Subjects in 18 CFR Part 410

Water pollution control.

#### PART 410—[AMENDED]

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin*, which are referenced in 18 CFR Part 410, by the addition of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) for sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) for shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) for water closets and associated flushing mechanism, maximum volume shall not exceed an average of three and one-half gallons of water, but no more than four gallons, per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M;

(iv) for urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1990.

(c) The Commonwealth of Pennsylvania shall adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1989. In the absence of such regulations, political subdivisions within the Pennsylvania portion of the Basin that have not adopted regulations to enforce water conservation performance standards for plumbing fixtures and fittings shall be required to adopt regulations that comply with the provisions of (a) by January 1, 1990.

(2) The provisions of this regulation shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) Manufacturers shall certify that their plumbing fixtures and fittings comply with the water conservation performance standards specified in subsection (1). Such certification shall be based on independent test results.

(4) The Executive Director shall periodically review the performance standards set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission. An initial review shall be completed within one year of the effective date of this regulation. This initial review shall consider the revision of subsection (1)(a)(iii) to require that effective January 1, 1990, maximum volume for water closets shall not exceed one and six-tenths gallons (six liters) per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M.

(5) Individual political subdivisions of the Commonwealth of Pennsylvania or agencies

of those individual political subdivisions seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(6) This regulation shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary

August 17, 1987.

[FR Doc. 87-19403 Filed 8-24-87; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 101

#### Proposed Customs Regulations Amendment Relating to the Customs Field Organization; Port Manatee, FL

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations by establishing a new Customs port of entry to be known as Port Manatee in the Tampa, Florida, Customs District of the Southeast Region. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

**DATE:** Comments must be received on or before October 26, 1987.

**ADDRESS:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Bernie Harris, Office of Inspection and Control, (202-566-9425).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts with ports within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and

aircraft, examine baggage, and enforce the Customs, and related laws.

The Manatee County Port Authority filed an application with Customs requesting the establishment of a new Customs port of entry at Port Manatee, Florida. A review of that application has confirmed that the proposed port meets the minimum Customs criteria for establishing ports of entry. The applicable standards, published as T.D. 82-37 in the Federal Register on March 9, 1982 (47 FR 10137), list 350 cargo vessel arrivals, or 2,500 formal entries per year, as the minimum potential Customs workload for establishing a port. Of the 1,485 vessels utilizing Port Manatee in 1986, the Tampa District reports that well over the 350 minimum were international cargo vessels.

By T.D. 86-14, published in the Federal Register on February 5, 1986 (51 FR 4559), the criteria used in evaluating applications to establish ports of entry were modified. The criteria, as further modified by T.D. 87-65 published in the Federal Register on May 4, 1987 (52 FR 16328), now require a commitment, by any applicant seeking port status by satisfying the cargo workload standard, to make optimal use of electronic data transfer capability to permit intergration with Customs Automated Commercial System (ACS). The Manatee County Port Authority has made this commitment.

The geographical limits of the proposed port of entry of Port Manatee would be that portion of Manatee County bounded on the north by the Manatee-Hillsborough County line, on the east by U.S. Interstate Highway 1-75, on the south by State Highway 64, but excluding the western off-shore island communities of Anna Maria, Bradenton Beach, Holmes Beach, and Longboat Key.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5, dated February 17, 1987 (52 FR 6282).

##### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs.

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4 and § 103.11(b) Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2324, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

#### Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

#### Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

#### Proposed Amendment

It is proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), as follows:

#### PART 101—[AMENDED]

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

**§ 101.3 [Amended]**

2. It is proposed to amend § 101.3(b) by inserting, "Port Manatee, Fla. including the territory described in T.D. 87- . . ." in appropriate alphabetical order in the column headed, "Ports of entry" in the Tampa, Florida, District of the Southeast Region.

R. Rosettie,

*Acting Commissioner of Customs.*

Approved: August 5, 1987.

Francis A. Keating, II,

*Assistant Secretary of the Treasury.*

[FR Doc. 87-19472 Filed 8-24-87; 8:45 am]

BILLING CODE 4820-02-M

**DEPARTMENT OF STATE****22 CFR Part 41 and 42**

[SD-210]

**Visas; Documentation of Immigrants and Nonimmigrants, Under the Immigration and Nationality Act, as Amended; Correction**

**AGENCY:** Bureau of Consular Affairs, Department of State.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects errors contained in the regulatory text of a proposed rulemaking which appeared in the Federal Register of August 10, 1987 (52 FR 29542).

**DATE:** Comments must be received on or before September 11, 1987.

**ADDRESS:** Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520, (202) 663-1204.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel or Guida Evans-Magher, Legislation and Regulations Division, Visa Services, Washington, DC 20520, (202) 663-1204; 663-1206.

**SUPPLEMENTARY INFORMATION:** The proposed rulemaking would implement numerous amendments to the Immigration and Nationality Act which were enacted by the 99th Congress.

Accordingly, the errors contained in the Department of State's publication SD-210 at 52 FR 29542, August 10, 1987, are corrected as follows:

**§ 42.12 [Corrected]**

1. On page 29544, the table in paragraph (a) of § 42.12 is corrected by changing the references in lines 3 and 4 of the column designated "Class", from "G-1" and "101(a)(15)(G)(i)" to "G-4" and "101(a)(15)(G)(iv)", respectively.

2. On page 29545 the table in paragraph (c) of § 42.12 is corrected by

changing the reference in line 8 of the column designated "Class", from "C-1 or C-2" to read "C2-1 or C2-2", and by adding the language "(conditional status)" after the reference "C4-1" in line 17.

**§ 41.91 [Corrected]**

3. In § 41.91(a), on page 29544, second column, before the five asterisks (\*) at the end of the paragraph designated (23) add the following:

(24) [Reserved]

**§ 42.91 [Corrected]**

4. In § 42.91 on page 29545, third column, before the five asterisks (\*) at the end of the paragraph designated (23) add the following:

(24) [Reserved]

Date: August 19, 1987.

Cornelius D. Scully, III,

*Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office.*

**Editorial Note:** Additional corrections to this document are published in the Corrections Section of this issue of the Federal Register.

[FR Doc. 87-19327 Filed 8-24-87; 8:45 am]

BILLING CODE 4710-06-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[AD-FRL-32517]

**Standards of Performance for New Stationary Sources; Reference Methods; Amendments § 60.106 of Subpart J; Addition of Method 10B for the Determination of Carbon Monoxide Emissions from Stationary Sources**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The purpose of this proposed rule is to amend Method 10 of Appendix A of 40 CFR Part 60 by adding an alternative interference trap and by making other minor amendments which are editorial in nature, and to add an alternative method, Method 10B, which uses a gas chromatographic procedure for the analysis of carbon monoxide (CO). Section 60.106(b) of Subpart J is also being amended to add Method 10B as an alternative method to Method 10. Method 10 is also being proposed as an acceptable alternative to Method 10A in the relative accuracy (RA) testing of CO continuous emission monitoring systems (CEMS's). The intended effect is to increase the flexibility in choosing

testing procedures for CO performance standards and RA testing of CEMS's.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

**DATES:** *Comments.* Comments must be received on or before November 9, 1987.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by September 15, 1987, a public hearing will be held October 9, 1987, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a meeting will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by September 15, 1987.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-87-07, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

*Docket.* Docket No. A-87-07, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

**SUPPLEMENTARY INFORMATION:****I. The Rulemaking**

An alternative Method 10 scrubber using an alkaline potassium permanganate solution in place of the current silica gel-ascarite scrubber is being proposed for removing interferences. An EPA study which

compared Methods 10, 10A, and 10B has shown that, when using this scrubber, potential interferences are completely removed and equivalent results are obtained by Methods 10, 10A, and 10B.

Based on the data from this study, Method 10 is also being proposed as an acceptable alternative to Method 10A for the RA testing of nondispersive infrared CO CEMS's when the alternative scrubber is used. Method 10B will allow the use of the Method 25 gas chromatographic system and is being proposed as an acceptable alternative method for standards of performance testing and for the RA testing of CO CEMS's.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply revise and add test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking. The other amendments are editorial in nature.

## II. Administrative Requirements

### A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statement should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see ADDRESSES section of this preamble).

### B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To all interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review except for interagency review materials (section 307(d)(7)(A)).

### C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking was not submitted to the Office of Management and Budget (OMB) for review because it amends a regulation already in place and does not contain cost implications nor impose additional burdens.

### D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

### List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Petroleum refineries.

Date: August 14, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 60, § 60.106, Appendix A, and Appendix B be amended as follows:

### PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

#### § 60.106 [Amended]

2. In § 60.106(b), by adding after the first sentence the following sentence to read as follows: "Method 10A or 10B may be used as an alternative method to Method 10."

### Appendix A—[Amended]

3. In Appendix A, by amending Method 10 as follows:

- a. In sections 5.3.3 and 7.2, by removing the word "paragraph" and adding, in its place, the word "Section."
- b. In section 7.1.1, by removing the symbol "¶" and adding, in its place, the word "Sections."
- c. In sections 7.1.1 and 7.1.2, by deleting the reference "(36 FR 24886)."
- d. By redesignation section 10 as section 11, and redesignating the citation numbers 10.1 through 10.6 as 1 through 6, and by adding a new section 10 to read as follows:

#### 10. Alternative Procedures

10.1 *Interference Trap.* The sample conditioning system described in Method 10A, Sections 2.1.2 and 4.2, may be used as an alternative to the silica gel and ascarite traps.

### Appendix B—[Amended]

4. In Appendix B, by revising section 3.2 of Performance Specification 4 to read as follows:

3.2 *Reference Methods.* Unless otherwise specified in an applicable subpart of the regulation, Method 10 is the RM for this PS. When used for nondispersive infrared analyzers, Method 10 shall use the alternative interference trap specified in Section 10.1 of the method. Method 10A or 10B is an acceptable alternative to Method 10.

5. By adding Method 10B to Appendix A as follows:

### Appendix A—Reference Methods

\* \* \* \* \*

#### Method 10B—Determination of Carbon Monoxide Emission From Stationary Sources

##### 1. Applicability and Principle

1.1 *Applicability.* This method applies to the measurement of carbon monoxide (CO) emissions at petroleum refineries and from other sources when specified in an applicable subpart of the regulations.

1.2 *Principle.* An integrated gas sample is extracted from the sampling point and analyzed for CO. After the sample is passed through a conditioning system to remove interferences, it is collected in a Tedlar bag. The CO is catalytically reduced to methane (CH<sub>4</sub>) prior to analysis by FID. The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement. The oxidation catalyst required in Method 25 is not needed for sample analysis. Complete Method 25 analytical systems are acceptable alternatives when calibrated for CO and operated by the Method 25 analytical procedures.

**Note.**—Mention of trade names or commercial products in this method does not

constitute the endorsement or recommendation for use by the Environmental Protection Agency.

**1.3 Interferences.** Carbon dioxide ( $\text{CO}_2$ ), moisture, and organics interfere with the analysis. The  $\text{CO}_2$  and moisture are removed from the sample by the alkaline permanganate conditioning system, and organics are not expected to be present at applicable source.

## 2. Apparatus

**2.1 Sampling.** Same as in Method 10A, Section 2.1.

## 2.2 Analysis

**2.2.1 Gas Chromatographic Analyzer.** A semicontinuous GC/FID analyzer capable of quantifying CO in the sample and containing at least the following major components.

**2.2.1.1 Reduction Catalyst.** Same as in Method 25, Section 3.2.2.

**2.2.1.2 Sample Injection System.** Same as in Method 25, Section 2.3.4, equipped to accept a sample line from the Tedlar bag.

**2.2.1.3 Flame Ionization Detector.** Linearity meeting the specifications in Section 2.3.5.1 of Method 25 where the linearity check is carried out using standard gases containing 20-, 200-, and 1,000-ppm CO. The minimal instrument range shall span, 10 to 1,000 ppm CO.

**2.2.1.4 Data Recording System.** Same as in Method 25, Section 2.3.6.

## 3. Reagents

**3.1 Sampling.** Same as in Method 10A, Section 3.1.

### 3.2 Analysis.

**3.2.1 Carrier, Fuel, and Combustion Gases.** Same as in Method 25, Sections 3.2.1, 3.2.2, and 3.2.3.

**3.2.2 Linearity and Calibration Gases.** Three standard gases with nominal CO concentrations of 20-, 200-, and 1,000-ppm CO in nitrogen.

**3.2.3 Reduction Catalyst Efficiency Check Calibration Gas.** Standard  $\text{CH}_4$  gas with a concentration of 1,000 ppm in air.

## 4. Procedure

**4.1 Sample Bag Leak-checks, Sampling, and  $\text{CO}_2$  Measurement.** Same as in Method 10A, Sections 4.1, 4.2, and 4.3.

**4.2 Preparation for Analysis.** Before putting the GC analyzer into routine operation, conduct the calibration procedures listed in Section 5. Establish an appropriate carrier flow rate and detector temperature for the specific instrument used.

**4.3 Sample Analysis.** Purge the sample loop with sample, and then inject the sample. Analyze each sample in triplicate, and calculate the average sample area (A). Determine the bag CO concentration according to Section 6.2.

## 5. Calibration

**5.1 Carrier Gas Blank Check.** Analyze each new tank of carrier gas with the GC analyzer according to Section 4.3 to check for contamination. The corresponding concentration must be less than 5 ppm for the tank to be acceptable for use.

**5.2 Reduction Catalyst Efficiency Check.** Prior to initial use, the reduction catalyst shall be tested for reduction efficiency. With the heated reduction catalyst bypassed, make triplicate injections of the 1,000-ppm  $\text{CH}_4$  gas (Section 3.2.3) to calibrate the analyzer. Repeat the procedure using 1,000-ppm CO (Section 3.2.2) with the catalyst in operation. The reduction catalyst operation is acceptable if the CO response is within 5 percent of the certified gas value.

**5.3 Analyzer Linearity Check and Calibration.** Perform this test before the system is first placed into operation. With the reduction catalyst in operation, conduct a linearity check of the analyzer using the standards specified in Section 3.2.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (calculated in Section 6.9 of Method 25) for each set of triplicate injections is less than 2 percent. Record the overall mean of the response factor values as the calibration response factor (R).

## 6. Calculations.

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

### 6.1 Nomenclature.

A = Average sample area.

$B_w$  = Moisture content in the bag sample.

C = CO concentration in the stack gas, dry basis, ppm.

$C_b$  = CO concentration in the bag sample, dry basis, ppm.

F = Volume fraction of  $\text{CO}_2$  in the stack.

$P_{\text{bar}}$  = Barometric pressure, mm Hg.

$P_w$  = Vapor pressure of  $\text{H}_2\text{O}$  in the bag (from Table 10-2, Method 10A), mm Hg.

R = Mean calibration response factor, area/ppm.

**6.2 CO Concentration in the Bag.** Calculate  $C_b$  using Equations 10B-1 and 10B-2. If condensate is visible in the Tedlar bag, calculate  $B_w$  using Table 10A-1 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate  $B_w$  using the temperature and barometric pressure at the sampling site.

$$B_w = \frac{P_w}{P_{\text{bar}}} \quad \text{Eq. 10B-1}$$

$$C_b = P \frac{A}{R(1-B_w)} \quad \text{Eq. 10B-2}$$

## 6.3 CO Concentration in the Stack.

$$C = C_b(1-F) \quad \text{Eq. 10B-3}$$

## 7. Bibliography

- Butler, F.E., J.E. Knoll, and M.R. Midgett. Development and Evaluation of Methods for Determining Carbon Monoxide Emissions. Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711. June 1985. 33p.
- Salo, A.E., S. Witz, and R.D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75-33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association, Boston, Massachusetts. June 15, 1975.) 14 p.
- Salo, A.E., W.L. Oaks, and R.D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74-190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association, Denver, Colorado, June 9, 1974.) 25 p.

[FR Doc. 87-19314 Filed 8-24-87; 8:45 am]

BILLING CODE 6560-50-M

# Notices

Federal Register

Vol. 52, No. 164

Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Economic Analysis

*Title:* Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons

*Form Number:* Agency—BE-47; OMB—0608-0015

*Type of Request:* Revision of a currently approved collection

*Burden:* 130 respondents; 650 reporting hours

*Needs and Uses:* This collection will be used to obtain statistical data on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. The information is needed to support U.S. trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.

*Affected Public:* Businesses or other for-profit institutions

*Frequency:* Annually

*Respondent's Obligation:* Mandatory

*OMB Desk Officer:* Francine Picoult, 395-7340

*Agency:* Bureau of Economic Analysis

*Title:* Annual Survey of Reinsurance and other Insurance Transactions by U.S. Insurance Companies with Foreign Persons

*Form Number:* Agency—BE-48; OMB—0608-0016

*Type of Request:* Revision of a currently approved collection

*Burden:* 200 respondents; 800 reporting hours

*Needs and Uses:* This collection will be used to obtain statistical data on transactions between U.S. insurance

companies and foreign persons. The information gathered is needed to support trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.

*Affected Public:* Businesses or other for-profit institutions

*Frequency:* Annually

*Respondent's Obligation:* Mandatory

*OMB Desk Officer:* Francine Picoult, 395-7340

*Agency:* Bureau of Economic Analysis

*Title:* Annual Survey of Royalties, License Fees, and other Receipts and Payments for Intangible Rights between U.S. and Unaffiliated Foreign Persons

*Form Number:* Agency—BE-93; OMB—0608-0016

*Type of Request:* Revision of a currently approved collection

*Burden:* 500 respondents; 2,000 reporting hours

*Needs and Uses:* This collection will be used to obtain statistical data on royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons. The information is needed to support U.S. trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.

*Affected Public:* Businesses or other for-profit institutions

*Frequency:* Annually

*Respondent's Obligation:* Mandatory

*OMB Desk Officer:* Francine Picoult, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 20, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-19462 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-CW-M

### Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Barbara A. Bailar

Joseph F. Caponio

Carol S. Carson

John E. Cremeans

Robert B. Ellert

Lucy A. Falcone

C.L. Kincannon

Frederick T. Knickerbocker

Daniel B. Levine

Martin Marimont

Jerome A. Mark

Harry A. Scarr

Charles A. Waite

Katherine K. Wallman

Allan H. Young

Edward A. McCaw,

Executive Secretary, Economic and Statistical Affairs, Performance Review Board.

[FR Doc. 87-19475 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-B5-M

### Economic Development Administration

#### Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Steven R. Brennen

John E. Corrigan

David Farber

Edward G. Jeep

Beverly L. Milkman

George Muller

Charles E. Oxley

Craig M. Smith

Edward A. McCaw,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 87-19476 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-B5-M

**International Trade Administration****[A-489-602]****Antidumping Duty Order;  
Acetylsalicylic Acid From Turkey****AGENCY:** International Trade Administration, Import Administration, Commerce.**ACTION:** Notice.

**SUMMARY:** In separate investigations concerning acetylsalicylic acid from Turkey, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that acetylsalicylic acid from Turkey is being sold at less than fair value and that sales of acetylsalicylic acid from Turkey are materially injuring a United States industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of acetylsalicylic acid from Turkey made on or after April 15, 1987, the date on which the Department published its "Preliminary Determination" notice in the *Federal Register*, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping order in the *Federal Register*.

**EFFECTIVE DATE:** August 25, 1987.**FOR FURTHER INFORMATION CONTACT:**

John J. Kenkel or John R. Brinkman, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3530 or 377-3965, respectively.

**SUPPLEMENTARY INFORMATION:** The product covered by this investigation is acetylsalicylic acid containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States* (TSUS).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(b)), on April 9, 1987, the

Department made its preliminary determination that there was reason to believe or suspect that acetylsalicylic acid from Turkey was being sold at less than fair value (52 FR 1222, April 15, 1987). On June 23, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 24492 July 1, 1987).

On August 11, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs Officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of acetylsalicylic acid from Turkey. These antidumping duties will be assessed on all unliquidated entries of acetylsalicylic acid from Turkey subject to this order entered, or withdrawn from warehouse, for consumption on or after April 15, 1987, the date on which the Department published its "Preliminary Determination" notice in the *Federal Register*.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margin percentage
Atabay Kimya Sanayi ve Ticaret.....	27.35
Proses Kimya Sanayi ve Ticaret.....	38.60
All Others.....	32.98

This determination constitutes an antidumping order with respect to acetylsalicylic acid from Turkey pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations, (19 U.S.C. 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Information Services, Import Administration, for copies of the upgraded list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C.

1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,  
Acting Deputy Assistant Secretary for Import Administration.

August 19, 1987.

[FR Doc. 87-19463 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

**[C-223-601]****Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From Costa Rica****AGENCY:** Import Administration, International Trade Administration, Commerce.**ACTION:** Notice.

**SUMMARY:** We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers or exporters in Costa Rica of certain fresh cut flowers as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 17.70 percent *ad valorem*. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to 17.03 percent *ad valorem* to reflect changes in the Exporter Exemption for Taxes, Surcharges and Duties on Imports program. The Department of Commerce and producers and exporters of certain fresh cut flowers entered into a suspension agreement on January 5, 1987. However, we continued the investigation at the request of petitioner. The suspension agreement will remain in force, and we shall not issue a countervailing duty order as long as the conditions of the suspension agreement are met.

**EFFECTIVE DATE:** AUGUST 25, 1987.**FOR FURTHER INFORMATION CONTACT:**

Steven Morrison, Office of Investigations, or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-0189 or 377-2786.

**SUPPLEMENTARY INFORMATION****Final Determination**

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in

Costa Rica of certain fresh cut flowers. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Exporters' Exemption from Taxes, Surcharges, and Duties on Imports.
- Exporters' Credit for Sales and Selective Excise Taxes on Domestic Product Purchases.
- Tax Credit Certificates (CAT).

We determine the estimated net bounty or grant to be 17.70 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect program-wide changes in the Exporters' Exemption from Taxes, Surcharges and Duties on Imports program that occurred before the preliminary determination. Therefore, the duty deposit rate is 17.03 percent *ad valorem*.

#### Case History

Since the last Federal Register publication pertaining to this case, (*Suspension of Countervailing Duty Investigation: Certain Fresh Cut Flowers from Costa Rica* (52 FR 01356, January 13, 1987)) the following event has occurred: On January 15, 1987, the petitioner requested that this investigation be continued under section 704(g) of the Act. Therefore, we are required to issue a final determination in this investigation.

#### Scope of Investigation

The products covered by this investigation are miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard carnations and pompom chrysanthemums, currently provided for in item 192.21 of the TSUS.

#### Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring bounties or grants (the review period) is fiscal year 1985, October 1, 1984 through September 30, 1985. Based upon our analysis of the petition, responses to our questionnaire, verification, and comments received from interested parties, we determine the following:

#### I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to producers or exporters of certain fresh cut flowers from Costa Rica under the following programs:

##### A. Certain Benefits Provided to Holders of Export Contracts

During the review period, American Flower had an export contract with the Government of Costa Rica under the Economic Emergency Law (*Ley para el Equilibrio Financiero del Sector Publico*). The export contract is a document which itemizes benefits that an exporter is eligible to apply for and receive. It is not itself a program; it only conveys eligibility for benefits, not actual benefits. Export contract benefits, which were verified as used, are described below:

1. *Exporter Exemptions for Taxes, Surcharges and Duties on Imports.* Businesses with export contracts may be exempted from paying six out of seven separately calculated duties and taxes normally levied on imported raw materials, intermediate products and capital goods used to produce exported finished products. Import tax exemptions on inputs not physically incorporated in an exported product, such as building materials, electrical sockets and plastic trays, when the exemptions are limited to exporters, are countervailable export subsidies. We verified that American Flower received these exemptions under its export contract during the review period and have included them in our subsidy calculations.

Certain of the exemptions of customs duties and indirect taxes are for inputs that are physically incorporated in an exported product. American Flower received exemptions for imported plastic sleeves used to export flowers in bunches and for imported fertilizers used in growing exported plants. We determined that these items were physically incorporated in the exported product and have not included these exemptions in our subsidy calculation. However, because part of the tax exemptions received were attributable to imported fertilizers which were used to produce cut flowers for the domestic market, we allocated the exemption from import taxes applied to fertilizers between export and domestic sales, and countervailed the exemption attributable to domestic sales. This was done because these benefits were available only to holders of export contracts.

A ten percent recapture tax was imposed on the amount a company saves when it is exempt from paying import duties and taxes. It was levied against only some imports which benefit from the exemptions. We determined, from government import duty collection records, the actual amount of recapture tax American Flower paid. In accordance with section 771(6)(A) of the Act, we reduced the subsidy rate by the amount of this tax paid because it was tied to the duty and tax exemption and it reduced the net exemption received.

During the review period, some materials imported by American Flower, e.g., greenhouse building materials used for flower production, were re-exported to its wholly-owned cut flower farm in Panama which supplies that domestic market. For items partially used in Costa Rica and partially re-exported to Panama, we reduced the amount of the subsidy calculated by the portion attributable to shipments to Panama. After making these adjustments, we divided the net savings under this program by total export sales and calculated an estimated net bounty or grant of 4.37 percent *ad valorem*.

In cases in which program-wide changes have occurred prior to a preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond more closely to the eventual duty liability. We verified that three taxes, i.e., the specific duty, the economic stabilization tax and the recapture tax, were eliminated after January 1, 1986. No entries of imports have been subject to, or exempted from, these taxes since January 1, 1986. Therefore, we have adjusted the duty deposit rate to reflect this change. The duty deposit rate for this program is 3.71 percent *ad valorem*.

2. *Exporters' Credit for Sales Tax and Selective Excise Tax on Certain Domestic Products Purchases.* We verified that during the review period those exporters eligible for benefits under export contracts were also eligible for credit for sales taxes and selective excise taxes paid for domestic purchases of certain articles such as irrigation and sprinkling system equipment. An eligible purchaser must apply to the appropriate ministry, receive approval and get credit for the amount of taxes paid. This credit may then be used on subsequent purchases.

American Flower received tax credits for domestic purchases, according to provisions of the export contract, for fiscal year 1985. The domestic purchase tax credits included credits for sales taxes on box tops and bottoms used to

export the flowers under investigation to the United States. Since these credits are equal to the amount of tax paid, they are a non-excessive exemption of prior stage indirect taxes on an item physically incorporated into the exported product, and are not countervailable under U.S. law. We excluded these credits in calculating the benefits under this program.

We determine that American Flower's credits for sales tax and selective excise tax on items other than boxes sent to the United States are countervailable as an export subsidy because the benefit is contingent upon export. To calculate the benefit from this program, we divided the value of tax credits received (excluding credits for boxes used for exports to the United States) by export sales. This results in an estimated net bounty or grant of 0.97 percent *ad valorem*.

#### B. Tax Credit Certificates (CAT)

These are government tax credit certificates (CAT) issued to eligible exporters based on the value of export sales. For sales to the United States, the face value of the certificate was 15 percent of the F.O.B. export value in fiscal year 1985.

After receiving payment for exported products and exchanging the foreign currency received at the Central Bank, an exporter may apply to the Central Bank to receive a CAT. If the Central Bank approves the application, it issues a CAT which is good for the payment of direct and indirect taxes starting one year after the date of issue. CAT expire two years after the date of issue. They are freely negotiable on the stock market from their date of issue until they expire. Since receipt of a CAT is contingent on export, we determine that the program is countervailable as an export subsidy.

American Flower sold all its CAT at a discount within a few months of their receipt. To calculate the benefits under this program, we divided the cash received by American Flower Corporation in fiscal year 1985 for its sales of CAT attributable to exports to the United States, by its export sales to the United States in the same period. We calculated the benefit as the discounted cash value received rather than the face value of the certificates. The discounted value is the net subsidy as defined by section 771(6)(B) of the Act, because deferral of receipt of the face value of the certificate was mandated by the government. On this basis, we calculated an estimated net subsidy of 12.35 percent *ad valorem*.

#### II. Programs Determined Not To Be Used

We determine that the producers or exporters of certain fresh cut flowers from Costa Rica did not use the following programs:

##### A. Accelerated Depreciation

Companies which have an export contract under the Economic Emergency Law No. 9655 (Ley para el Equilibrio Financiero del Sector Publico (February 24, 1984)), which amends the Income Tax Law, No. 837 (December 20, 1946), may use accelerated depreciation for new equipment if (1) they are approved for that benefit by the specific provisions of their export contract and (2) if they export over 50 percent of their sales (by value).

The Ministry of Finance issues a schedule for depreciation of assets which is available to any business in Costa Rica, whether or not it exports. Those with export contracts, who qualify for accelerated depreciation, can take assets which are normally depreciable according to the schedule in up to ten years and depreciate them in five years and take assets depreciable according to the schedule in more than ten years and depreciate them in ten years.

We found that the accelerated depreciation law was first made available to exporters in fiscal year 1986. We saw the income tax returns for American Flower Corporation for fiscal years 1984 and 1985 and observed that the depreciation schedules attached did not utilize accelerated depreciation.

##### B. Certificates for Increasing Exports (CIEX)

This program is intended to benefit the agricultural and agro-industrial sector of the economy by providing grants to producers who increase exports from one year to the next. Qualifying exporters must apply to the Central Bank to receive this benefit.

The program ran out of funds in 1984 (before the review period). Additional partial funding for the 1984 distribution recently was appropriated, which the Central Bank intends to pay in fiscal year 1987, based on chronological order of application in 1984, until the funds run out. American Flower is on the list of contingent beneficiaries for this distribution but received no pay-out for CIEX in the review period or the following fiscal year. Therefore, we determine the CIEX program was not used.

##### C. Loan Programs—Small Farmer Loan Program

This program provides low interest loans to farmers whose gross annual income does not exceed approximately \$15,000. We confirmed from business records that American Flower was not eligible for, and consequently did not use, this loan program.

##### D. Income Tax Exemptions for Export Earnings

Businesses making application with the appropriate government agency may have been eligible for a tax exemption for export earnings for fiscal year 1984. We examined the tax returns of American Flower Corporation for fiscal year 1984 and fiscal year 1985 and observed that they did not use this income tax exemption for export earnings.

##### E. Loan Program—Fund for Financing Exports

The FOPEX program provides loans for financing exports of non-traditional products, including cut flowers. FOPEX received its working capital primarily from the World Bank and the Bank for International Development. A small percent of total FOPEX working capital is derived from money provided by a consortium of central banks and private banks, all domiciled in Central America, and from interest received from prior loans. We verified that American Flower did not receive any loans under this program.

#### IV. Program Determined Not To Exist

##### Loan Program—Export Credit

In its response, the Government of Costa Rica stated that it operated no export credit program and granted no export credits during the review period. We specifically inquired about this during verification at the Ministry of Exports and Investments and at the FOPEX and CAT program offices of the Central Bank, which had general knowledge about export financing programs. We were told that there was no such program.

We examined the financial statements and loan records of American Flower Corporation and found no evidence of use of such a program. Therefore, we determine that an export credit program does not exist.

##### Petitioner's Comment

Petitioner argues that the information on the recapture tax was submitted too late to be considered.

**DOC Position:** We disagree. During verification, we received copies of six

import entry documents (Polizas) from American Flower. A single page was missing from one of these Polizas which had information about the amount of recapture tax paid on that importation. The government of Costa Rica subsequently submitted the omitted page. This submission, based on official Costa Rican government records, simply completed an otherwise unchanged verification exhibit. As such, we have accepted the information contained in that document for purposes of making our final determination.

#### Respondents' Comments

**Comment 1:** American Flower claims that the Department understated the tax credit on boxes exported to the United States containing the cut flowers under investigation. They argue that the amount of the subsidy resulting from these tax credits must be reduced by the full amount of the tax credit attributable to boxes exported to the United States.

**DOC Position:** We agree. We have determined that an eligible company can be exempted from 100 percent of the applicable taxes rather than 50 percent. Using verified information, we have adjusted the calculations for our final determination accordingly.

**Comment 2:** The Government of Costa Rica and American Flower request that we adjust our calculations to reflect the elimination of the specific duty and economic stabilization tax. Alternatively, they argue that we should deduct the recapture tax paid from the gross subsidy.

**DOC Position:** The specific duty, the economic stabilization tax and the recapture tax, in effect during the review period, were terminated on January 1, 1986. To calculate the fiscal year 1985 subsidy rate, we included the specific duty and economic stabilization tax exemption benefit and offset the subsidy by the amount of recapture tax payments on the exemptions received. Allowance of the recapture tax offset was made in accordance with section 771(6)(A) of the Act which allows reduction of the gross subsidy by a payment made in order to receive a subsidy.

To calculate the bonding rate when, as here, verifiable program wide changes occurred prior to the preliminary determination, we adjusted the duty deposit rate to correspond to the eventual liability. Since all three taxes were eliminated on January 1, 1986, we computed the bonding rate as it would be with these taxes set at zero.

**Comment 3:** The Government of Costa Rica and American Flower state that there was an Agrochemical Law passed in January 1986 which exempts most

agricultural sector imports from import duties. These imports include many of the products we found were subject to import tax exemptions for exporters. Since these products may be imported duty-free by a wide variety of industries in the agricultural sector, the Agrochemical Law does not provide a domestic subsidy. Consequently, they request that the benefits attributed to tax exemptions for these products not be used in computing the bonding rate.

**DOC Position:** The Department has made no determination whether the benefits of the Agrochemical Law confer a subsidy. Since this law was enacted after our review period, its use was not examined. The status of the Agrochemical Law will be examined in any administrative review of the Suspension Agreement that may be requested.

#### Comments From Other Interested Parties

**Comment 1:** The Association of Costa Rican Flower Growers (Acoflor) objects to the Department limiting its investigation to one exporter which accounted for more than 60 percent of the cut flowers exported to the United States during the review period. They contend that the flower exporters which were not questioned have a different incidence of use of programs than the company investigated, and argue that the statute requires the Department to investigate an industry, not just one company, even if that company accounts for over 60 percent of the exports.

**DOC Position:** We disagree. Nothing in the statute requires the Department to examine any particular percentage of exports or companies in a countervailing duty investigation. The purpose of an investigation is to derive an estimate of the amount of the net subsidy; more precise calculations of subsidies are done in the context of section 751 Administrative Reviews. In limiting its investigation to 60 percent of the value of exports to the United States, we have followed precedent set by other cases. See, for example, the *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel for Malaysia*, (50 FR 9852, 9854, March 12, 1985). Moreover, Departmental flexibility to manage investigations in such a way as to effectively conserve administrative resources is consistent with the statutory scheme of the Act, which sets strict deadlines for completing investigations.

#### Verification

In accordance with section 776(a) of the Act, we verified the information

used in making our final determination. During verification, we followed standard verification procedures, including meeting with the government and company officials and tracing information in the responses to source documents including accounting ledgers, financial statements, and annual reports.

#### Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on December 3, 1986. Written views have been received and considered in reaching this final determination.

In the event the January 5, 1987, suspension agreement is violated or no longer meets the statutory requirements of section 704(d) of the Act, the Department, in accordance with section 704(i)(1)(A) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries or withdrawals from warehouse, for consumption of certain fresh cut flowers and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of Act (19 U.S.C. 1303, 1671d(d)).

August 17, 1987.

Lee W. Mercer,  
Acting Assistant Secretary for Trade  
Administration.

[FR Doc. 87-19465 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

#### Final Affirmative Countervailing Duty Determination; Miniature Carnations From Colombia

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers or exporters in Colombia of miniature carnations as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 2.17 percent *ad valorem*. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to 1.04

percent *ad valorem* to reflect changes in the Tax Reimbursement Certificate Program. The Department of Commerce and producers and exporters of miniature carnations entered into a suspension agreement on January 5, 1987. However, we continued the investigation at the request of the petitioner and the Government of Colombia. The suspension agreement will remain in force, and we shall not issue a countervailing duty order, as long as the conditions of the suspension agreement are met.

**EFFECTIVE DATE:** August 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jessica Wasserman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1442 or 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Colombia of miniature carnations. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Tax Reimbursement Certificate Program (CERT).
- PROEXPO Working Capital Loans Under Resolutions 59 and 22.
- PROEXPO Capital Investment Loans under Decree 2366.
- Duty and Tax Exemptions under Plan Vallejo.

We determine the estimated net bounty or grant to be 2.17 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Tax Reimbursement Certificate Program that occurred before the preliminary determination. Therefore, the duty deposit rate is 1.04 percent *ad valorem*.

**Case History**

Since the last Federal Register publication pertaining to this case [the *Suspension of Countervailing Duty Investigation: Miniature Carnations from Colombia*, (52 FR 1353, January 13, 1987)] the following events have occurred: On January 15, 1987, the petitioner and on January 28, 1987, the Government of Colombia requested that this investigation be continued under section 704(g) of the Act. Therefore, we

are required to issue a final determination in this investigation.

**Scope of Investigation**

The product covered by this investigation is miniature (spray) carnations, currently provided for in item 192.17 the *Tariff Schedules of the United States* (TSUS).

**Analysis of Programs**

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1985. Based upon our analysis of the petition, responses to our questionnaire, verification, and comments received from interested parties, we determine the following:

**I. Programs Determined to Confer Bounties or Grants**

We determine that bounties or grants are being provided to producers or exporters in Colombia of miniature carnations under the following programs:

**A. Tax Reimbursement Certificate Program (CERT)**

The petitioner alleges that the Government of Colombia provides tax certificates to exporters which may exceed indirect taxes paid. The CERT, which the Government of Colombia claims is intended to rebate all or part of the indirect taxes paid by exporters, is freely negotiable on the stock market and can be used for paying a variety of taxes. Decree 637 of March 15, 1984, established a CERT of one percent as of April 1, 1984, on exports of all cut flowers to the United States, including miniature carnations. We found at verification that, as stated in the government response, the CERT was eliminated on October 29, 1985, for exports of all fresh-cut flowers, including miniature carnations, to the United States.

In order to determine whether export payments, purportedly operating as a rebate of indirect taxes, are in fact a bona fide rebate of indirect taxes, the Department examines whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a link between eligibility for export payments and indirect taxes paid; and (3) the

government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where these conditions are met, the Department considers that the rebate system does not confer a subsidy to the extent that it rebates prior stage indirect taxes on inputs that are physically incorporated in the exported products and indirect taxes levied at the final stage. To the extent that the rebates exceed the payment of such indirect taxes, we would find that a countervailable benefit is being provided.

In this case, however, the questionnaire responses did not provide, nor were we able to verify, any studies detailing the relationship between indirect taxes paid on physically incorporated inputs used in the production of flowers and the level of the CERT rebate. Therefore, we determine that the full rebate under the CERT program is an excessive remission of indirect taxes.

To determine the benefit provided under this program, we took the value of CERTs received by the three companies under investigation during the review period on exports of miniature carnations to the United States and divided by the total exports to the United States of miniature carnations by the three companies. On this basis, we calculate an estimated net bounty or grant of 1.13 percent *ad valorem*.

In cases in which a program-wide change occurs prior to a preliminary determination and where the change is verified, the Department's practice is to adjust the duty deposit rate to correspond to the eventual duty liability. We verified that the CERT rebate on exports of miniature carnations to the United States was eliminated on October 29, 1985. Exports of the subject merchandise to the United States ceased receiving benefits under this program before our preliminary determination. Therefore, we have adjusted the duty deposit rate to zero percent *ad valorem* to reflect this change.

**B. Export Promotion Fund (PROEXPO) Working Capital Loans under Resolutions 59 and 22**

The petitioner alleges that producers and exporters of miniature carnations may obtain short-term working capital financing at preferential rates from PROEXPO, Colombia's principal export development fund.

We verified that exporters of miniature carnations receive short-term

loans for working capital financing under Resolution 59 and Resolution 22. The resolutions authorize the financing of the working capital needs of exporting companies which produce, store or sell merchandise other than coffee, petroleum and its by-products. The financing is in pesos and is channeled through commercial banks and finance corporations.

Resolution 59 loans are for 180 days and the interest is paid quarterly in advance. Resolution 22 loans are for periods up to one year, with interest paid quarterly in advance. The loans are made to the companies by the commercial banks and rediscounted through PROEXPO. We verified that the nominal interest rate on such loans from January 1 to March 15, 1985, was 18 percent, and that the nominal interest rate on such loans from March 15 to December 31, 1985, was 22 percent. The companies under investigation made interest payments on Resolution 59 and Resolution 22 loans during the review period.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. In order to determine whether short-term export financing under Resolution 59 and Resolution 22 was provided at preferential rates, we compared the rates charged to the appropriate benchmark. In this case, we have determined that the appropriate benchmark is the short-term interest rate available under the Fund for Agricultural Financing ("FFA") and the Agrarian Fund, the major sources of short-term financing available to agriculture in Colombia. The average interest rate charged under these funds in 1985 was 22.5 percent. Comparing this benchmark to the interest rates charged on the Resolution 59 and Resolution 22 loans, we determine that these loans were provided at preferential rates.

To determine the benefit, we based our calculations on the total value of all loans received by the three companies because they could not segregate specific loans for either miniature carnations or for exports to the United States. We changed the nominal interest rates to effective interest rates on the loans received, and we changed the benchmark rate to an effective rate. We then calculated the total amount of interest the three companies would have paid under the benchmark, and subtracted from that the amount of interest actually paid. We then allocated the difference over total exports to derive an estimated net bounty or grant of 0.43 percent *ad valorem*.

#### C. PROEXPO Capital Investment Loans Under Decree 2366

The petitioner alleges that under Decree 2366, PROEXPO provides preferential long-term financing for capital investment to exporters. The Resolution, which authorizes the financing of the acquisition of fixed assets used for the production of goods that are exported, is available to exporters which produce, store or sell merchandise other than coffee, petroleum and its by-products. The amount of the loan cannot exceed 100 million pesos and the maximum term is five years. The loans are administered through commercial banks by PROEXPO. We verified that Colombian exporters and producers of miniature carnations received long-term financing under Decree 2366 and that the companies under investigation had long-term PROEXPO financing outstanding during the review period.

Because only exporters are eligible for these loans, we determine that these loans are countervailable to the extent that they are provided at preferential rates. We verified that the nominal annual interest rate charged on such loans from January 1 to March 15, 1985, was 14 percent. We also verified that PROEXPO increased the interest rate to 18 percent on March 15, 1985. Since no long-term commercial loans are made by the commercial banking system in Colombia, we used as our benchmark the long-term interest rates available from the FFA, the major source of long-term financing to agriculture in Colombia. In each of the years in which the PROEXPO loans were taken out, the FFA interest rate was 21 percent. Based on this comparison, we determine these loans were provided at preferential rates and are, hence, countervailable.

To calculate the benefit from these loans, we changed nominal interest rates to effective interest rates on the loans received, and we changed the benchmark rate to an effective rate. Applying the long-term loan methodology, we calculate an estimated net bounty or grant of 0.22 percent *ad valorem*.

#### D. Duty and Tax Exemptions under Plan Vallejo

The petitioner alleges that under Plan Vallejo Colombian firms may contract with the Ministry of Development to import machinery and raw materials for use in export production without paying import duties and sales taxes.

Plan Vallejo exempts exporters from paying import duties on imported raw materials, intermediate products and capital goods utilized to produce

exported finished products. The duty exemptions are: (1) The customs duty applicable to the type of product imported; (2) PROEXPO contribution equal to five percent of the CIF value of the imports; (3) a Common Fund Contribution equal to two percent of the CIF value of the import; (4) are indirect tax pursuant to law 50 of 1984 which is equivalent to eight percent of the CIF value of the import; and (5) stamp taxes equal to 3.15 percent of the FOB value of the import.

Exemptions of customs duties and indirect taxes on imports of physically incorporated inputs, such as certain agrochemicals, are not countervailable. However, exemptions on non-physically incorporated inputs, such as imported capital goods, are countervailable export subsidies when the exemption is conditioned upon exportation. We verified that one of the companies under investigation received exemptions on machinery designed to be used to sort miniature carnations.

To calculate the benefit from this program, we allocated the amount of exemptions received by the company under investigation on imports not physically incorporated into the exported product over the value of total exports of miniature carnations by all companies under investigation during the review period. We calculate an estimated net bounty or grant of 0.39 percent *ad valorem*.

#### II. Program Determined Not to Confer a Bounty or Grant

We determine that the following program does not confer a bounty or grant to producers or exporters in Colombia of miniature carnations.

##### Air Freight Rates

The Colombian Administrative Department of Civil Aeronautics (DAAC), through Resolution No. 5833, established minimum and maximum air freight rates for shipments of cut flowers to the United States. The petitioner alleges that the regulated rates may be preferential and, as such, may provide countervailable benefits to exporters of miniature carnations.

According to the government response, air freight rates in Colombia are set by Resolution 8336 and updated by Resolutions 5776 and 9415. DAAC is empowered to establish the freight rates that airlines can charge for their freight services in Colombia both for domestic and international flights. Pursuant to Resolution 5833, updated by Resolution 6333, the minimum and maximum air freight rates in effect during the review period for miniature carnations were

\$0.45 and \$0.60 per kilogram for flowers transported from Colombia to the United States. In *Roses and Other Cut Flowers from Colombia: Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, (51 FR 44930, December 15, 1986 (*Other Cut Flowers*)), we determined that rates negotiated by the companies under investigation with private carriers were substantially below the maximum rate established by the DAAC and were, therefore, freely negotiated rates.

In this investigation, we verified that many of the rates charged from Bogota to Miami were lower than the maximum regulated rate. Although there were shipments made above the maximum regulated rate these were shipments of flowers by private charter planes which are chartered when regularly scheduled cargo planes are full. In these instances the exporter must pay for the round trip. Even though we found instances when the charter rates were above the government-regulated maximum rate, the fact that many of the rates charged on regularly scheduled cargo planes were below the maximum rate leads us to conclude that the rates charged are a function of competition in the air freight market and not the result of government suppression of rates. Therefore, we determine that the regulated rates are not preferential rates and do not confer a bounty or grant upon the exportation of miniature carnations.

### III. Programs Determined Not to be Used

We determine that producers or exporters in Colombia of miniature carnations did not use the following programs:

#### A. Research and Development (R & D) Program

The petitioner alleges that a portion of the CERT export credits bestowed on exports (to countries other than the United States) are withheld from growers and are applied to a fund for research and development. At verification we learned that PROEXPO does not have a research and development program. Following the original suspension agreement negotiated with the United States in *Other Cut Flowers*, PROEXPO retained the funds that would otherwise have been disbursed to flower exporters. At the time of the suspension agreement, there was discussion of using these funds for generic advertising and for research and development to be carried out in the United States. However, neither the advertising nor the research and development programs were carried

out. Therefore, we determine that this program was not used.

#### B. Preferential Export Insurance

The petitioner alleges that export insurance may be provided on preferential terms to producers or exporters of the subject merchandise. The government response states that export insurance is available through a privately-owned company under a contract with PROEXPO. At verification, we learned that producers or exporters of miniature carnations had no export insurance coverage.

#### C. Regional Funding to Promote Flower Production

The petitioner alleges that the Colombian government established a line of credit, which may be preferential, to promote flower production in the Department of Cauca (a region in northwest Colombia). At verification we learned that government assistance has been provided in Cauca for reconstruction following an earthquake, and that the alleged preferential line of credit was not used by producers or exporters of miniature carnations.

#### D. Preferential Export Credit through PROEXPO

In our initiation, we stated that we would investigate the following PROEXPO programs: (a) Credits to export trading firms; (b) short-term credits for expansion; (c) credits for export promotion; and (d) credits to purchase raw materials, to see if they provided benefits to producers or exporters of miniature carnations in Colombia. At verification, we learned that Resolution 22, Resolution 59, and Decree 2366 were the only lines of credit used by flower producers or exporters.

#### E. Benefits to Free Industrial Zones

The Colombian government has established Free Industrial Zones (FIZs) dedicated to export production. Producers located in a FIZ may receive certificates equal to 15 percent of the FOB value of Colombian value added on their exported products. These certificates may be sold on the stock market, cashed in at face value after one year, or redeemed to pay income taxes. In addition, capital equipment used in the production of exported merchandise may be imported duty free. At verification, we learned that the benefits available to companies located in FIZs are available to industrial companies only. We verified that none of the flower producers or exporters is located in a FIZ and that none has received benefits under this program.

#### F. Export Tax Benefits

Law 67 of 1979 may provide special incentives, preferential tariffs, and import/export systems for companies that trade Colombian products abroad. According to the government response, law 67 of 1979 was enacted to promote exports of small- and medium-sized companies through trading companies. Trading companies operate according to rules established in Decree 1519. At verification, we learned that none of the companies under investigation received any assistance under Law 67 of 1979 or under Decree 1519.

#### Petitioner's Comments

*Comment 1:* Petitioner argues that the DOC incorrectly adjusted the duty deposit rate for the CERT program to zero percent because benefits continue to be conferred under the CERT program on exports to countries other than the United States, including Canada. Petitioner contends that, the DOC must investigate the transshipment of the subject merchandise through third countries and take into account the CERTs received on shipments of flowers to Canada or other third countries which are finally sold in the United States.

*DOC Position:* At verification, we found no evidence that miniature carnations are transhipped to the United States through Canada or any other third country. It is not the Department's practice to investigate alleged subsidies to third countries absent evidence of transshipment. Moreover, we believe that any bounties or grants provided specifically on exports to countries other than the United States do not constitute countervailable subsidies under the Act.

*Comment 2:* Petitioner contends that, whatever the merit of the Department's refusal to countervail export benefits conferred on exports to third countries in other cases, there is no justification in the case of the CERT program, since the Department is aware that the rebate amount was increased to exports to third countries at the same time that rebates were eliminated on exports to the United States.

*DOC Position:* We disagree. An increase in the rebate on exports to third countries simultaneous with elimination of rebates on exports to the United States does not show that a subsidy is conferred on exports to the United States. Absent evidence that there are subsidized shipments of the subject merchandise to third countries and evidence that the exports are transhipped to the United States, the Department does not countervail benefits on exports to third countries.

See also *DOC Position* on Petitioner's Comment 1.

*Comment 3:* Petitioner contends that, for both PROEXPO working capital loans and long-term loans, the Department should have used commercial interest rates as the basis for its benchmarks rather than the FFA interest rate. Petitioner argues that to compare the cost of one government loan to another misses the intrinsic purpose of using a benchmark in the first place and results in a severe undervaluation of the subsidy conferred by preferential financing. Moreover they contend that applying the rationale apparently followed by the Department leads to the absurd result that a country could avoid the imposition of countervailing duties by aligning all of its loan program rates to the same level. In addition, petitioner contends that the selection of the FFA interest rate as the benchmark is inconsistent with the Department's past practice regarding preferential loan programs in Colombia. In *Certain Textile Mill Products and Apparel from Colombia: Suspension of Countervailing Duty Investigations* (50 FR 9832, March 12, 1985) (*Certain Textile Mill Products*), the Department based its benchmark at least partly on commercial rates. Petitioner argues therefore that the Department should include commercial interest rates in the calculation of the benchmark in this case.

*DOC Position:* We disagree. To determine whether loans are countervailable, we examine the terms and conditions of loans to which firms would otherwise have had access. In this case, over 90 percent of total financing available to the agricultural sector in Colombia is from government sources. Such loans are not limited to a specific enterprise or industry, or group of enterprises or industries, since they are available to the entire agricultural sector. They, therefore, serve as an appropriate benchmark.

As for petitioner's argument about the benchmark used in *Certain Textile Mill Products*, we found that there was no predominant alternative source of financing for the textile industry in the Colombian economy taken as a whole. For that case, therefore, we weight-averaged commercial financing and other financing to arrive at our benchmark. In this case, commercial financing accounts for less than 10 percent of the financing available to the agricultural sector. Therefore, we derived our benchmark from the predominant source of funds available to the agricultural sector in arriving at our benchmark, i.e., the FFA interest

rate for long-term loans and an average of the FFA and the Agrarian Fund for short-term loans.

*Comment 4:* Petitioner argues that the change in the interest rate from 18 percent to 22 percent on PROEXPO loans does not warrant a program-wide change.

*DOC Position:* In general, when there is a verifiable program-wide change prior to our preliminary determination, it is the Department's policy to adjust the cash deposit rate to reflect this change. In this case, however, we do not have sufficient verified information to measure the effect of the change on the level of benefits provided under this program. Therefore, we have calculated a cash deposit rate based on the benefit provided under this program during the review period.

*Comment 5:* Petitioner argues that, notwithstanding any questions regarding the correctness of the Department's position vis-a-vis agriculture's status as a group of industries, it now appears that the Department has gone one step further and expanded the reach of its "generally available" test into the domain of export subsidies. Petitioner contends that although the Department does not argue the PROEXPO subsidies are too widely available to be countervailable, it achieves substantially the same result by measuring the actual benefit of PROEXPO financing using a benchmark derived from another government program, and justifying that comparison by pointing to the wide availability of the benchmark program.

*DOC Position:* We chose as our benchmark rate the predominant alternative non-countervailable source of financing for the industry under investigation. The benchmark interest rate chosen is part of a program (FFA) which is available to all companies in the agricultural sector. We have consistently stated that the agricultural sector constitutes more than a specific enterprise or industry or group of enterprises or industries. Since the FFA is not countervailable, it is appropriate to consider the rates charged under this program as possible benchmarks. In this case, the industry under investigation is a part of the agricultural sector and the government programs from which the benchmark rate was derived provide more than 90 percent of the financing used by the agricultural sector. See also *DOC Position* to Petitioner's Comment 3.

*Comment 6:* Petitioner contends that the Department should have used commercial medium-term interest rates charged by finance companies in Colombia as the benchmark for

PROEXPO capital investment loans under Decree 2366. Petitioner argues that these finance companies are the major source of financing for loans with terms greater than one year and that, although the maximum rates for long-term loans made by the finance companies are controlled by the government, they are the nearest equivalent to long-term commercial interest rates in Colombia.

*DOC Position:* We disagree. Under our long-term loan methodology, we first examine whether the companies under investigation have long-term commercial loans with comparable terms and conditions. We verified that none of the companies had any comparable long-term commercial loans outstanding during the review period. Furthermore, we found that the agricultural sector does not use the commercial finance companies to any significant extent. Therefore, we used the FFA fund as our benchmark for long-term loans. See also *DOC Position* to Petitioner's Comment 3.

*Comment 7:* Petitioner claims that the Department's rationale for considering agriculture to be so large a group that benefits provided to it do not constitute a countervailable subsidy has been rejected by the Court of International Trade (CIT). Petitioner cites *Bethlehem Steel Corp. v. United States*, 7 CIT 339, 590 F. Supp. 1237 (1980); *Agrexco Agricultural Export Co. v. United States*, 9 CIT \_\_\_\_\_, 604 F. Supp. 1238 (1985); *Cabot Corporation v. United States*, 9 CIT \_\_\_\_\_, 620 F. Supp. 722 (1985).

*DOC Position:* Upon reexamination, we have concluded that these cases do not prevent the Department from determining that a benefit which is available to all of the agricultural sector is not countervailable on the grounds that it is provided to more than a specific enterprise or industry or group of enterprises or industries. The Department considers programs, available to the entire agricultural sector not to be limited to a specific enterprise or industry, or group of enterprises or industries. See *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985); and *Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement: Roses and Other Cut Flowers from Colombia* (51 FR 44930, December 15, 1986). To the extent that *Bethlehem*, *Agrexco*, and *Cabot* stand for the proposition that generally available subsidies may be countervailable, we disagree with those decisions of the court. Furthermore, petitioner has cited only those decisions

which it believes support its position on general availability. Petitioner has omitted any reference to those decisions of the Court of International Trade such as *PPG Industries, Inc. v. United States*, 13 CIT \_\_\_\_\_, Slip Op. 87-57 (1987), and *Carlisle Tire and Rubber Co. v. United States*, 5 CIT 229 (1983), which clearly support the government's position on specificity.

**Comment 8:** Petitioner argues that government-controlled air freight rates provided a benefit measured by the difference between the market price, i.e., the charter freight rates, and the regulated rate. Petitioner argues that whether or not there is a cost to the donor, i.e. the airline, is not relevant to the determination of whether there is a subsidy. Furthermore, petitioner argues that the Department did not verify that the rate schedule permits recovery of full costs.

**DOC Position:** We disagree. First, the charter freight rates apparently include a premium to cover the cost of round trip flights. Therefore, charter rates that are higher than the maximum regulated rate do not indicate that the regulated rate is preferential. Moreover, as discussed in section II, since we found that the freight rates charged on many regular cargo flights are below the maximum rate, we consider that the rates being charged are the function of competition and not government suppression of the maximum freight rate that can be charged. Since we have found that the rates are not preferential, the cost issues raised by petitioner need not be addressed.

**Comment 9:** Petitioner contends that it did not receive the questionnaire response of *Agricola Los Arboles* and that the questionnaire response is not in the public record. Petitioner argues that the Department should reject the response and use best information otherwise available since the response was submitted after the preliminary determination and thus was not timely.

**DOC Position:** We disagree. Due to the fact that the company in question was in financial difficulty, there was a delay in preparing the response. The Department, therefore, agreed to accept the response late. The response was, however, received prior to the preliminary determination. The response was received and verified and a copy was served on petitioner.

**Comment 10:** Petitioner argues that revised export data submitted by the companies under investigation after verification should not be used.

**DOC Position:** We agree. The issue of using revised sales data did not arise until verification, and the data were not submitted to the Department until after

verification. Furthermore, the data submitted were not complete. Therefore, we have used the export data that were verified.

**Comment 11:** Petitioner argues that, since respondents had the capability to misrepresent the volume of their export sales, any information they submit with respect to that section of the questionnaire becomes automatically suspect. Under these circumstances, petitioner submits that the agency should use the best information otherwise available when making its determination. The best information otherwise available is contained in the Bureau of Census, U.S. Import Statistics for the subject merchandise.

**DOC Position:** We disagree. The export statistics used in the final determination were verified by the Department at the companies under investigation using standard verification methods. We believe these figures more accurately reflect exports of the subject merchandise from Colombia to the United States than the aggregate data reported by the Bureau of Census, U.S. Import Statistics for the subject merchandise.

**Comment 12:** Petitioner argues that benefits under Plan Vallejo are countervailable because they were received in the review period. Petitioner contends that respondents' argument that the entitlement to the benefit is not legally certain and that therefore the benefits are not countervailable is not supported by Department practice.

**DOC Position:** We agree. One respondent was exempted from paying duties on capital equipment during the review period. Although the company could become liable for the duties on some future date if the company failed to meet its export goals, it had not failed to meet its export goals in the past and we found no evidence that the company was likely to fail to meet its export goals. A cash-flow analysis dictates that the benefit was received in the review period since, without the exemption, the company would have had to pay the duty.

#### Respondents' Comments

**Comment 1:** Respondents argue that in determining the benefit on PROEXPO financing, the ratio that should have been used to calculate any alleged preference was the ratio between the nominal interest rates rather than the ratio between the effective rates.

**DOC Position:** When possible, the Department uses effective rather than nominal interest rates since this results in a more accurate measure of the subsidy.

**Comment 2:** Respondents contend that in the preliminary determination a calculation error was made in computation of the benefit derived from the Plan Vallejo exemption. The dollar value of exports of one company under investigation was misconstrued as representing the peso value of the company's exports.

**DOC Position:** We agree and have used the appropriate denominator for the final determination.

**Comment 3:** Respondents argue that, with regard to the CERT program, tax rebates on sales to third-country markets cannot legally be considered countervailable subsidies under the U.S. countervailing duty law. The U.S. countervailing duty law refers to bounties or grants bestowed on "merchandise imported into the United States" (19 U.S.C. 1671).

**DOC Position:** Subsidies on exports to third countries may, under certain circumstances, be considered countervailable under the U.S. countervailing duty law. For example, merchandise imported into the United States through a third country meets the statutory definition of "merchandise imported into the United States." However, subsidies which are received exclusively based on exports to countries other than the United States are attributable exclusively to those exports. Likewise, subsidies received solely because of exports to the United States are wholly attributable to exports to the United States. In this case, however, we found no transshipment of the subject merchandise through third countries, not did we find any subsidies provided solely on exports to the United States.

**Comment 4:** Respondents argue that an action under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is the proper vehicle for seeking redress in third country market matters. If the petitioner is concerned about alleged subsidies in third markets where the petitioner competes, then the petitioner's appropriate remedy is section 301 and not the U.S. countervailing duty law.

**DOC Position:** As we stated in *DOC Position on Petitioner's Comment 1*, we believe that export subsidies provided exclusively to markets other than the United States do not constitute a countervailable subsidy under U.S. law; therefore, we need not comment on matters pertaining solely to third country markets.

**Comment 5:** Respondents argue that flowers are not transshipped through Canada to the United States. All flowers are shipped to Miami, and no CERT is received on the flower shipments.

**DOC Position:** At verification we found no evidence of transshipment of the subject merchandise to the United States through Canada. See *DOC Position* on Petitioner's Comment 1.

**Comment 6:** Respondents argue that if the Department takes into account the increase in interest rates under PROEXPO's short- and long-term loan programs, the benefits will be *de minimis*.

**DOC Position:** See *DOC Position* on Petitioner's Comment 4.

#### Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials and tracing information in the responses to source documents, including accounting ledgers, financial statements, and annual reports.

#### Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on December 3, 1986. Written views have been received and considered in reaching this final determination.

In the event the January 5, 1987, suspension agreement is violated, or no longer meets the statutory requirements of section 704(d) of the Act, the Department, in accordance with section 704(i)(1)(A) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

August 20, 1987.

[FR Doc. 87-19464 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

#### Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 15,

1987 at (9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

#### Agenda:

##### General Session:

1. Introduction of Members and Visitors.
2. Presentation of Papers or Comments by the Public.
3. Election of Chairman.
4. Discussion of Latest Changes in the Regulations.
5. Discussion of the Annual Report for 1987.
6. Discussion of the Annual Plan for 1988.

##### Executive Session:

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes call Ruth D. Pitts, 202-377-4959.

Date: August 19, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-19461 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DT-M

#### Minority Business Development Agency

##### Business Development Center Program Applications; New York

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at \$347,000 for the project performance of January 1, 1988 to December 31, 1988. The Upstate New York MBDC will operate in the Upstate New York Standard Metropolitan Statistical Areas (SMSA) including but not limited to Rochester, Buffalo, and Syracuse, New York. The first year cost for the MBDC will consist of \$347,000 in Federal funds and minimum of \$61,235 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and

technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

**Closing date:** The closing date for applications is September 25, 1987.

Applications must be postmarked on or before September 25, 1987.

**ADDRESS:** New York Regional Office, Minority Business Development Agency, Jacobs K. Javits Federal Building, Room 3702, New York, New York 10278, (212) 264-3262.

**FOR FURTHER INFORMATION CONTACT:** Gina A. Sanchez, Regional Director New York Regional Office at (212) 264-3262.

**SUPPLEMENTARY INFORMATION:**

Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

**Dated:** August 10, 1987.

**William R. Fuller,**

*Deputy Regional Director, New York Regional Office.*

[FR Doc. 87-19498 Filed 8-24-87; 8:45 am]

**BILLING CODE 3510-21-M**

**National Oceanic and Atmospheric Administration**

**Coastal Zone Management; Federal Consistency Appeal by A. Paul King From an Objection by the New Jersey Department of Environmental Protection**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On June 30, 1987, the Department of Commerce received a letter from A. Paul King (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the New Jersey Department of Environmental Protection to Appellant's consistency

certification for U.S. Army Corps of Engineers Permit Application No. 86-1586-12, under section 10 of the River and Harbor Act of 1899, for filling of wetlands to construct a single-family home in Waretown, New Jersey.

If the Appellant perfects his appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

**Dated:** August 19, 1987.

**Daniel W. McGovern,**  
*General Counsel.*

[FR Doc. 87-19411 Filed 8-24-87; 8:45 am]

**BILLING CODE 3510-08-M**

**Coastal Zone Management; Federal Consistency Appeal by Nicholas Carlisi and Seymour Herman From an Objection by the New York Department of State**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On June 23, 1987, the Department of Commerce received a letter from Roy L. Haje on behalf of Nicholas Carlisi and Seymour Herman (Appellants) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the New York Department of State to the Appellants' consistency certification for U.S. Army Corps of Engineers Permit Application No. 87-0102-L3, under section 10 of the River and Harbor Act of 1899, for closing off and back-filling an indented boat slip in Island Park, Nassau County, New York.

If the Appellants perfect the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice of the Federal Register and a local newspaper.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

**Dated:** August 19, 1987.

**Daniel W. McGovern,**  
*General Counsel.*

[FR Doc. 87-19412 Filed 8-24-87; 8:45 am]

**BILLING CODE 3510-08-M**

**Coastal Zone Management; Federal Consistency Appeal by the City of Ponce, Puerto Rico From an Objection by the Puerto Rico Department of Natural Resources**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On July 13, 1987, the City of Ponce, Puerto Rico (Appellant) filed with the Secretary of Commerce a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Puerto Rico Department of Natural Resources to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. 87IPM-20069, under section 10 of the River and Harbor Act of 1899, for an after-the-fact permit to fill wetlands for construction of an industrial park in Ponce.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: August 19, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87-19413 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-08-M

[P342B]

#### Marine Mammals; Issuance of Permit; Cascadia Research Collective

On May 5, 1987, notice was published in the *Federal Register* (52 FR 16428) that an application had been filed by the Cascadia Research Collective, 2181/2 West Fourth Avenue, Waterstreet Building, Suite 291, Olympia, Washington 98501, to take blue whales (*Balaenoptera musculus*), humpback whales (*Megaptera novaeangliae*), sei whales (*Balaenoptera borealis*), minke whales (*Balaenoptera acutorostrata*), harbor porpoises (*Phocoena phocoena*), and Dall's porpoises (*Phocoenoides dalli*) by harassment.

Notice is hereby given that on August 19, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Director, Permit Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: August 19, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19486 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

[P77-29]

#### Marine Mammals; Issuance of Permit; Southwest Fisheries Center, National Marine Fisheries Service

On July 7, 1987, notice was published in the *Federal Register* (52 FR 25456) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to take California sea lions and harbor seals by harassment for scientific research on the effects of aerial survey activities on pinniped haulouts.

Notice is hereby given that on August 19, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 19, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19487 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

#### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting on September 1-2, 1987, of its Mississippi/Louisiana Habitat Protection Advisory Panel, which will review marsh management issues; permit application LMNOD-SP (Bayou Rigaud) 67; a National Marine Fisheries Service/Corps of Engineers Memorandum of Understanding; the status of the Gulf initiative, and the revised habitat policy and proposed operational guidelines of the Gulf of Mexico Fishery Management Council. The public meeting will be held at the Baton Rouge Hilton, 550 Hilton Avenue, Baton Rouge, LA.

For further information contact Wayne E. Swingle, Gulf of Mexico

Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: August 20, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-19484 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

#### North Pacific Fishery Management Council; Amended Meeting Notice

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The agenda as published in the *Federal Register* (52 FR 30422, August 14, 1987) for the public meeting of the North Pacific Fishery Management Council's Policy and Planning Committee and public teleconference has been amended to include the following:

(1) Council members will review sablefish catches in the Gulf of Alaska and make recommendations to the National Marine Fisheries Service on whether or not the season should be reopened in the Southeast and West Yakutat Districts.

(2) In addition to the four locations listed in the original *Federal Register* notice for the public teleconference, the public may also listen in at the State Legislative Information Office, 101 Gjoa, Petersburg, Alaska, and at the State Legislative Information Office, 210 Lake Street, Sitka, Alaska.

All other information as published in the original agenda remains unchanged.

For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: August 14, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-19485 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

#### National Telecommunications and Information Administration

##### Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) performance Appraisal System:

Richard C. Beaird  
Dennis R. Connors

Larry Eads  
David Farber  
William D. Gamble  
Harold G. Kimball  
Robert J. Mayher  
Richard D. Parlow  
Charles M. Rush  
Roger K. Salaman  
Neal B. Seitz  
Linda A. Townsend  
Francis S. Urbany  
William F. Utlaut  
Edward A. McCaw,

*Executive Secretary, National  
Telecommunications and Information  
Administration, Performance Review Board.*  
[FR Doc. 87-19477 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-60-M

### National Technical Information Service

#### Intent to Grant Exclusive Patent License; Cancer Prognostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cancer Prognostics, Inc. having a place of business at 1250 Broadway, New York, NY 1000, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 6-911,863, "Laminin Receptor Gene and Use in Tumor Diagnosis and Management." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,  
*Associate Director, Office of Federal Patent  
Licensing, National Technical Information  
Service, U.S. Department of Commerce.*  
[FR Doc. 87-19417 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-04-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Military Traffic Management Command; Directorate of Personal Property; Mobile Home One-Time-Only (MOTO) Rate Program; Proposed Changes

**AGENT:** Military Traffic Management Command (MTMC), Department of the Army, Department of Defense.

**ACTION:** To announce the proposed change to the mobile home rate program.

**SUMMARY:** Movement solicitations will be issued daily as required, allowing all DOD-approved mobile home carriers to submit offers. Carriers may respond to only those moves desired. Offers will be all-inclusive, containing linehaul, tolls, escort service, anti-sway, over-dimension charges, permits, licenses and other services as designated by the service member. Origin/destination services may or may not be included. A revised Rate Solicitation, effective November 1, 1987, will be issued during August 1987. The solicitation will contain the rules and provisions to be used as a basis for one-time-only rates covering the movement of privately-owned mobile homes.

Comments should be returned no later than September 30, 1987.

#### FOR FURTHER INFORMATION CONTACT:

Mrs. Sheila Alexis or Miss Betty Yanowsky, HQ Military Traffic Management Command, Attn: MT-PPC-D (Room 408), Falls Church, Virginia 22041-5050, telephone: (202) 756-1190.

Joseph R. Marotta,

*Colonel, GS, Directorate of Personal Property.*

[FR Doc. 87-19402 Filed 8-24-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education

#### Intent to Waive Certain Requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 for the Republic of the Marshall Islands

**AGENCY:** Department of Education.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is given that, under section 1003(a) of the Elementary and Secondary Education Act, the Secretary intends to waive certain requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 for the Department of Education of

the Republic of the Marshall Islands (formerly part of the Trust Territory of the Pacific Islands) beginning July 1, 1987. This notice sets forth the terms and conditions under which the Secretary intends to grant the waiver, and invites public comments.

**DATES:** Comments must be received on or before September 24, 1987.

**ADDRESSES:** All comments concerning this notice should be addressed to Mr. James Ogura, Chief, Program Policy Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2018, FOB-6), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Ogura. Telephone: (202) 732-4701.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Title V of the Omnibus Territories Act, 48 U.S.C. 1469a, authorizes the Secretary to consolidate Federal education programs for which an Insular Area is eligible to apply. Programs that the Secretary has consolidated include, for example, Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). From the list of consolidated programs, an Insular Area may apply annually for a consolidated grant for two or more of those programs. The Insular Area may then use its consolidated grant funds to carry out one or more of the programs included in its consolidated grant application. The Insular Area must comply with the statutory and regulatory requirements that apply to each program under which it expends its consolidated grant funds. The Department of Education (DOE) of the Republic of the Marshall Islands (formerly part of the Trust Territory of the Pacific Islands) has applied to receive consolidated grant funds for the 1987-88 school year.

##### B. Authority for Granting a Waiver

Under section 1003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 3383(a), the Secretary is authorized to waive, upon request, any requirements of the ESEA or the ECIA for an Insular Area if the Secretary determines that compliance with those requirements is "impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions. . . ." Any waiver under section 1003(a) is subject to the terms and conditions that the Secretary deems necessary to carry out

the purposes of the program whose requirements are being waived.

### C. Waiver Request

The DOE has indicated in its consolidated grant application that it intends to spend a portion of its consolidated grant funds on activities under Chapter 1 of the ECIA. Accordingly, the DOE has requested the Secretary to waive the applicability of three Chapter 1 requirements because those requirements are impractical or inappropriate due to conditions of circumstances particular to the Marshall Islands.

First, the DOE has requested a waiver of section 556(b)(2), 20 U.S.C. 3805(b)(2), which requires an annual assessment of educational needs and, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance. According to the DOE, all children in all schools are educationally deprived and eligible for Chapter 1 services. Moreover, the educational needs of those children are very basic. As a result, selecting children who are in greatest need when all children have great needs is inappropriate. In addition, the requirement to perform an annual needs assessment is impractical. The testing instrument available in the Marshall Islands (which assesses achievement in English and mathematics in grades 3 through 8) does not address the needs of children at all age levels. Moreover, due to limited funds and staff, only one-half of the students can be tested each year. Further, transportation to the outlying islands makes completing an annual needs assessment within an appropriate timeframe impossible.

Second, the DOE has requested a waiver of section 557, 20 U.S.C. 3806, which requires that eligible students in private schools receive equitable Chapter 1 services. In *Aquilar v. Felton*, the United States Supreme Court held that it was unconstitutional for public school personnel to provide Chapter 1 instructional services on the premises of religiously affiliated private schools. As a result, Chapter 1 benefits must be provided through instructional services at a neutral site or by certain other means. In the Marshall Islands, however, neutral facilities are not available near the private schools to provide Chapter 1 services; public school sites are already overcrowded; and educational radio, television, mobile vans, and computer-assisted instruction are impractical or unavailable. Under its plan, the DOE would use the consolidated grant funds it would be required to expend on services for

eligible private school children under Chapter 1 to provide additional services for those children under Chapter 2.

Finally, the DOE has requested a waiver of section 558(c), 20 U.S.C. 3807(c), which requires, in part, that a school district in which all school attendance areas are project areas provide services with State and local funds that are substantially comparable in each area. Comparability is determined by factors such as districtwide salary schedule, pupil/staff ratios, and expenditures/pupil ratios. According to the DOE, pupil/teacher ratios for schools with enrollments over 100 vary from 43.5/1 to 14/1. Most teachers are assigned to their home island, because problems of transportation, communication, distances between islands, and cost make relocating teachers and their families difficult. Moreover, budget limits preclude hiring additional teachers, and overcrowded conditions already require split sessions. For similar reasons, it is also impractical to reassign students to schools away from their homes to achieve comparability.

### D. Management Plan

Section 1003(a)(2) of the ESEA provides that any waiver is subject to the terms and conditions that the Secretary deems necessary, including submission of a plan for management of the funds in a manner designed to achieve the purposes of the program whose requirements are being waived. The Secretary has determined that the description in the DOE's consolidated grant application of the Chapter 1 activities the DOE plans to conduct in 1987-88 is sufficient for purposes of section 1003(a)(2). Under that application, the DOE plans to expend approximately \$1 million for Chapter 1 activities. Of that amount, approximately \$500,000 would be used for construction of school facilities for the Marshall Islands' educationally deprived school population and \$500,000 would be used for teachers, aides, and supplies in basic skills. The DOE also plans, in accordance with its waiver request, to use the consolidated grant funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services to those children under Chapter 2. For each subsequent year that the DOE submits a consolidated grant application that includes Chapter 1 activities, the Secretary will evaluate those activities to ensure that they are consistent with all applicable requirements, the waiver, and the purposes of Chapter 1.

### E. Notice of the Secretary's Intent to Grant a Waiver

Section 1003(a)(1) of the ESEA requires that, at least 30 days before approving a request for a waiver, the Secretary must publish in the *Federal Register* a notice of his intent to do so and the terms and conditions under which the waiver will be granted. In accordance with this requirement, notice is hereby given that, subject to the terms and conditions described below, the Secretary intends to waive the applicability of the requirements in sections 556(b)(2), and 557, and 558(c) of Chapter 1 to the DOE.

### F. Terms and Conditions Under Which a Waiver Would Be Granted

Under Section 1003(a)(2), the DOE agrees to comply with the following terms and conditions:

(1) All consolidated grant funds that are expended for Chapter 1 activities by the DOE during the period covered by the waiver will be spent in accordance with—

(a) All applicable statutory and regulatory requirements, except those Chapter 1 requirements that are specifically identified in the waiver;

(b) The Chapter 1 activities described in the DOE's annual consolidated grant application or amendments to the application;

(c) The budget contained in the DOE's annual consolidated grant application; and

(d) These terms and conditions.

(2) Consolidated grant funds that the DOE would be required to expend on Chapter 1 services for students in private schools will be used to provide additional services for those students under Chapter 2.

(3) The waiver remains in effect until the DOE is able to comply with the waived requirements and/or until the DOE ceases to operate Chapter 1 activities; and

(4) If the conditions or circumstances that justified the waiver change, the DOE will notify the Department and the terms of the waiver will be adjusted accordingly.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 87-19434 Filed 8-24-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance; Restriction of Eligibility for Cooperative Agreements

AGENCY: Department of Energy.

**ACTION:** Notice of Award for the following Cooperative Agreements:

DE-FC01-87EI20466 with the State of Minnesota  
 DE-FC01-87EI20467 with the State of Wisconsin  
 DE-FC01-87EI20468 with the State of Ohio  
 DE-FC01-87EI20469 with the State of Connecticut  
 DE-FC01-87EI20470 with the State of Maine  
 DE-FC01-87EI20471 with the Commonwealth of Massachusetts  
 DE-FC01-87EI20472 with the State of Michigan  
 DE-FC01-87EI20473 with the State of Vermont  
 DE-FC01-87EI20474 with the State of New Hampshire  
 DE-FC01-87EI20475 with the State of Rhode Island  
 DE-FC01-87EI20476 with the Commonwealth of Pennsylvania  
 DE-FC01-87EI20477 with the State of New Jersey  
 DE-FC01-87EI20478 with the State of New York  
 DE-FC01-87EI20479 with the State of Delaware

**SUMMARY:** The U.S. Department of Energy, Office of Planning, Management, and Information Services, announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of the above listed Cooperative Agreements. These Cooperative Agreements will permit the involved states to conduct Surveys of No. 2 heating oil residential and wholesale price data, as well as determine the level of primary heating oil inventories in these states. This data will be a valuable mechanism which will allow states to monitor both price and inventory trends, and respond to inquiries about heating oil prices from consumers, consumer groups, business/trade associations, and local and other state governmental agencies. The data will also permit development of a vital data base for policy analysis, planning, and energy demand forecasting.

**Eligibility:** Award of these Cooperative Agreements has been limited to the above listed states because of their unique qualifications and capabilities to provide the necessary information, based on participation in this program in prior heating oil seasons. In addition, since these states use their authorities to collect this information and have established data collection relationships with heating oil distributors and

refiners, they are the only organizations which can conduct these surveys.

**Term:** The term of these Cooperative Agreements shall be twelve months.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, ATTN: Neil D. Weiss, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Stephen J. Michelsen,  
*Acting Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 87-19387 Filed 8-24-87; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

[RW-859]

### Nuclear Fuel Data Form

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Notice of request for comments on proposed revisions to DOE Form RW-859, "Nuclear Fuel Data".

**SUMMARY:** The U.S. Department of Energy (DOE) is currently considering revisions to the Form RW-859, "Nuclear Fuel Data," and is soliciting comments on the proposed revisions. In accordance with the Paperwork Reduction Act of 1980, the EIA, in cooperation with the DOE's Office of Civilian Radioactive Waste Management (OCRWM), is providing the general public with an opportunity to comment on the proposed revisions. The revisions are intended to ensure that there are clear instructions on completing the forms, respondent burden is minimized to the extent possible, and survey questions are designed in the proper format for ease in reporting.

**DATE:** Written comments must be submitted no later than September 24, 1987.

**ADDRESS:** Comments should be submitted to Kathy Gibbard, Survey Manager, Energy Information Administration, EI-531, Mail Stop 2G-090, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Copies of Form RW-859 and instructions can be obtained from Kathy Gibbard at the above address or by calling (202) 586-1718.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

## I. Background

Pursuant to section 205(a)(2) of the DOE Organization Act (Pub. L. 95-91, 42 U.S.C. 71132(a)(2)), the Energy Information Administration is responsible for carrying out a central, comprehensive, and unified energy data and information program. The program collects, evaluates, assembles, analyzes, and disseminates data and information in support of the DOE's OCRWM.

## II. Current Action

A. Several revisions to the Form RW-859 have been proposed. These proposed revisions are made subject to the conditions that all inaccurate historical data are corrected and all incomplete historical data are completed by the respondents. Until these conditions are satisfactorily met by the respondents and approved by the DOE, the current Form RW-859 will remain in place. The DOE intends to revise the form in the future to increase the amount of detail collected on canistered fuel and on fuel requiring special handling. In order to avoid undue reporting burden, however, the DOE believes that additional discussions and study are needed on both topics before appropriate questions can be framed. Respondents are asked to consider these two subject areas in light of their operating experience and to be prepared to provide comments on them to the DOE at a later date. The proposed revisions are as follows:

1. Data on individual assemblies are no longer required (respondents may, however, continue to report by assembly, if they desire). Instead, all information is provided on groups of assemblies, with only the I.D.'s of the individual assemblies being reported to identify which belong to the group. A group is defined as those assemblies having the same initial enrichment, cycle/reactor history, current location, and fuel/vendor types.

2. The data on each group of assemblies will be provided when the group is permanently discharged. However, assemblies temporarily discharged at the end of the cycle and assemblies that are freshly inserted or reinserted at the start of a cycle will be individually identified, by I.D. number.

3. The utility certification of "data correctness" will be modified so that a "Corporate Officer's" signature is no longer required.

4. The reporting schedule would be modified to allow the Form RW-859 to be submitted either:

- a. Ninety days after a cycle start up; or

b. Once each year, by February 15, with data that reflect the status as of December 31 of the preceding year.

A respondent may choose either reporting option, but, once chosen, any change in reporting schedule would require DOE concurrence. Also, data for any reactors that have shut down and/or restarted during calendar year 1987 must be submitted on the revised Form RW-859 by February 15, 1988. For those respondents choosing option "a," data on those reactors in shut down status for one year would be required to submit the form once, 365 days after shut down, and, thereafter, only if a fuel status change occurs (as in discharging fuel from the core). When the reactor restarts, another Form RW-859 must be submitted in 90 days. The regular schedule is then resumed.

B. Several deletions to the Form RW-859 have been proposed. They are as follows:

1. Section 1.0: Parent company mailing address.

2. Section 2.0: Reactor location, power, core, status.

3. Section 3.0: Pool crane data, additional storage data, reserve storage planning information, shipping cask and cask handling data, and rail transportation information.

Much of these data are already on file in the Form RW-859 data base, and will not be lost when the deletions are made to the form.

For the data collection using the revised Form RW-859, it is estimated that the average time required to complete the form will be 30 hours per reactor. This amounts to a 50 percent reduction in reporting burden from last year's figure of 60 hours per reactor when respondents were required to submit and verify a considerable amount of historical data.

### III. Request for Comments

Copies of the revised Form RW-859 are being sent for comment to the respondents and the Edison Electric Institute concurrently with publication of this notice. Other interested persons or organizations are also invited to participate by submitting information, views, or proposed changes. Comments should be submitted no later than September 24, 1987, to the address indicated above in the "For Further Information Contact" section. Comments should be identified on the outside envelope and on the document with the designation: "Proposed Revision To The Data Collection Form: RW-859."

The following general guidelines are provided to assist in the preparation of responses:

#### *As a potential respondent:*

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

H. Do you know of any publicly available data that are similar to data collected on the Form RW-859 as revised? If yes, please provide details.

#### *As a potential data user:*

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of this information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys; they also will become a matter of public record.

**Statutory Authority:** Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), section 170B of the Atomic Energy Act of 1954 (42 U.S.C. 2210b), and the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

Issued in Washington, DC, on August 19, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87-19481 Filed 8-24-87; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket Nos. ER87-577-000 et al.]

#### Public Service Company of Colorado et al.; Electric Rate and Corporate Regulation Filings

August 20, 1987.

Take notice that the following filings have been made with the Commission:

##### 1. Public Service Company of Colorado

[Docket No. ER87-577-000]

Take notice that on August 14, 1987, Public Service Company of Colorado (Public Service), tendered for filing a proposed change in its Non-firm Energy Agreement (Agreement) between Public Service and the City of Colorado Springs, Colorado (Colorado Springs). Public Service states that the proposed change is an Amendment to Public Service's Agreement with Colorado Springs dated May 15, 1986, on file with the Commission under Public Service's FERC Rate Schedule No. 42.

Public Service states that the Amendment to the Agreement with Colorado Springs provides for a one year extension of the initial agreement between Public Service and Colorado Springs.

Public Service states that copies of the filings were served upon all parties to the Agreement and affected state commissions.

*Comment date:* September 3, 1987, in accordance with Standard Paragraph E at the end of this document.

##### 2. Northern Indiana Public Service Company

[Docket No. ER87-576-000]

Take notice that on August 14, 1987, Northern Indiana Public Service Company (NIPSCO), tendered for filing pursuant to an Interconnection Agreement between NIPSCO and Wabash Valley Power Association, Inc. (Wabash Valley), a Second Supplemental Agreement dated November 5, 1986.

Said Second Supplemental Agreement amends Article VII, Section 7.7.1, Control of Unscheduled Capacity and Energy, to clarify the accounting for overscheduling or underscheduling of energy by Wabash Valley during the April 1, 1985 through December 31, 1987 period.

NIPSCO respectfully requests waiver of the Commission's filing requirements, and requests this filing to be made effective January 1, 1985.

Copies of the filing were served upon Wabash Valley and the Indiana Utility Regulatory Commission.

*Comment date:* September 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-19441 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-574-000 et al.]

#### Upper Peninsula Power Co. et al.; Electric Rate and Corporate Regulation Filings

August 19, 1987.

Take notice that the following filings have been made with the Commission:

##### 1. Upper Peninsula Power Company

[Docket No. ER87-574-000]

Take notice that on August 11, 1987 Upper Peninsula Power Company (UPPCO) tendered for filing pursuant to the Commission's Rules and Regulations Part 35 under the Federal Power Act an Agreement For Wholesale Electric Power Service between Upper Peninsula Power Company and the City of Gladstone dated August 4, 1987. UPPCO states that this agreement replaces the existing agreement between UPPCO and the City of Gladstone dated July 1, 1987. UPPCO requests an effective date of November 1, 1987 for this Agreement.

*Comment Date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

##### 2. Gulf States Utilities Company

[Docket No. ER85-538-003]

Take notice that on August 12, 1987 Gulf States Utilities Company tendered for filing a revised compliance report on

refunds made to customers under the settlement agreement previously filed in this docket. The tender was made in compliance with a letter order from the Director of the Division of Electric Power, dated July 13, 1987.

Copies of the filing were served upon each person designated on the official service list in this proceeding.

*Comment Date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 3. New York State Electric & Gas Corporation

[Docket No. ER87-568-000]

Take notice that on August 13, 1987, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 3 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would increase revenues by \$10,753 based on the twelve month period ending March 31, 1988.

This rate filing, Supplement No. 3, is made pursuant to Sections 1(e) and (f) and 2(e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1986. In addition, Con Edison's pro rated share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The leveled annual carrying charges included in the calculation continue to reflect a 15.50 percent return on equity which was approved by the New York State Public Service Commission's Opinion 85-8 in Case 28824, effective April 15, 1985.

NYSEG requests an effective date of April 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

*Comment Date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 4. Western Area Power Administration

[Docket No. EF87-5171-000]

Take notice that on August 4, 1987, the Under Secretary of the Department of Energy, by Rate Order No. WAPA-33, did confirm and approve, on an interim basis, to be effective beginning on the first day of the October 1987 billing period, a new Rate Schedule SLIP-F1 for the Salt Lake City Area Integrated Projects (SLCA/IP) firm capacity and energy marketed by the Western Area Power Administration (Western). The SLCA/IP is comprised of the Colorado River Storage Project (CRSP), the Rio Grande Project, and the Collbran Project.

The new rate will be in effect pending the Commission's approval of it or substitute rate on a final basis. The FY 1985 SLCA/IP Power Repayment Study, on which the power rate is based, indicates that a firm composite rate of 9.92 mills/kWh, comprised of a demand charge of \$25.08/kW-year and an energy charge of 5.0 mills/kWh, is necessary for repayment of the projects. The new rate is a decrease of 27.00 mills/kW-year (73 percent) to current Rio Grande Project customers, a decrease of 11.88 mills/kWh (54 percent) to the current Collbran Project customer and no change to current CRSP customers. No change in average annual revenues is expected. The new rate reflects the integration of the CRSP, the Rio Grande Project, and the Collbran Project into the SLCA/IP. The benefits of integration are (1) an increase in marketable resources, (2) simplification of contract development and administration, (3) one rate adjustment process instead of three, and (4) timely repayment of the Collbran and Rio Grande Projects. The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

The Under Secretary states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period, pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

*Comment Date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

#### 5. Nantahala Power and Light Company

[Docket No. EL82-20-003]

Take notice that on July 29, 1987, Nantahala Power and Light Company tendered for filing pursuant to a letter from Mr. Jerry R. Milbourn dated June 26, 1987 the revised PL-(COSAC) tariff rates reflecting restated data for the calendar years 1979 through 1985 in

compliance with Commission Opinion Nos. 255 and 255-A.

*Comment date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. Pacific Power & Light Company, an assumed business name of PacifiCorp**

[Docket No. ER87-522-000]

Take notice that on August 11, 1987 Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, a Letter Agreement dated August 6, 1987 between Pacific and Cheyenne Light, Fuel and Power Company (Cheyenne).

Copies of the filing were served upon all parties hereto and the Wyoming Public Service Commission.

*Comment date:* September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19442 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-131-001 and CP87-132-000]

**Ocean State Power Project; Intent To Prepare a Draft Environmental Impact Statement and Request For Comments on its Scope; Tennessee Gas Pipeline Co.**

August 19, 1987.

**Introduction**

On December 19, 1986, Tennessee Gas Pipeline Company (Tennessee) filed applications before the Federal Energy Regulatory Commission (FERC) in the above-referenced dockets, under section 7 of the Natural Gas Act, for authorization to transport up to 50,000

Mcf (thousands of cubic feet per day) of natural gas and to construct interstate natural gas pipeline facilities. As proposed, compressor facilities, 28.7 miles of pipeline looping in six segments in New York, and 4.4 miles in one segment in Massachusetts would be constructed. The facilities are necessary to deliver gas from the Canadian/United States border at Niagara, New York, to the site of a new electric power generating plant proposed by Ocean State Power (OSP) in Burrillville, Rhode Island. Docket No. CP87-131-000 was amended on August 5, 1987, and is now Docket No. CP87-131-001.

OSP proposes to construct, in two phases, a total 470 megawatt (two units, each 235 MW) combined-cycle power plant using turbines that exhaust into a heat recovery steam generator. Natural gas to be delivered by Tennessee would be the primary fuel for power generation. The 50,000 Mcf would fuel Unit 1; another 50,000 Mcf would be needed in the future when Unit 2 is constructed. Number 2 fuel oil, to be supplied via a spur from an existing Mobil Oil Company pipeline would be used during emergency disruptions of gas flow. In addition, OSP proposes to take up to 4 million gallons of water per day from the Blackstone River for plant process and cooling purposes. The water withdrawal would require the construction of an intake structure on the Blackstone River at Woonsocket, Rhode Island, and a 10-mile-long water pipeline from there to the power plant site. OSP proposes to use the city of Woonsocket's water supply and the Providence Water Supply Department's Scituate Reservoir as backup sources.

The Ocean State Power Project would supply electricity to several utility companies in the New England Power Pool. OSP estimates that each phase of the power plant construction would employ about 150 workers for 30 months. Once operational the facility would provide permanent employment for about 75 persons.

OSP must obtain authorization from the Rhode Island Energy Facility Siting Board (EFSB). Authorization for construction and operation of the power plant is not within the FERC's jurisdiction.

Tennessee proposes to charge, and OSP has agreed to pay, a 100-percent demand rate for Tennessee's proposed transportation service based upon the incremental cost of the facilities which would be constructed to perform the service. In effect, OSP would pay for the natural gas pipeline facilities.

**Notice of Intent**

Notice is hereby given that approval of the projects proposed by Tennessee, and specifically, in consideration of their relation to the construction and operation of the Ocean State Power Plant, would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure, 18 CFR 2.82(b), and at the request of the State of Rhode Island, an environmental impact statement (EIS) will be prepared.

The FERC will be the lead Federal agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act (NEPA). The Rhode Island Office of Intergovernmental Relations, acting at the request of the EFSB, on behalf of relevant state and local agencies, will be a cooperating agency, to ensure that state and local environmental requirements are satisfied. The draft EIS (DEIS) will be prepared by an environmental consultant under contract to OSP. The consultant will be selected and supervised by the FERC staff throughout the NEPA compliance process, and will be required to certify that it has no financial interest in the outcome of the project. The FERC staff will prepare a work statement and will have final approval over the contents of the DEIS.

**Outline of Current Environmental Issues**

The DEIS will address the environmental concerns that have been identified by the FERC staff, interveners and other Federal and State agencies, and individuals which have already written in response to earlier notices on the projects. These issues include, but are not limited to:

- Power plant, water and oil pipelines:
  - Design, process and construction details, and impact mitigation measures
  - Impact of withdrawals on the Blackstone River and other potential water sources
  - Facilities for backup water sources
  - Need for oil pipeline
  - Noise quality impact and mitigation measures
  - Cooling tower plume effects on roads and Black Hut Management Area
  - Solid waste disposal and emergency water disposal
  - Effect on National Register of Historic Places listed and eligible sites
  - Impact on wetlands and mitigation measures

—Effect on nearby seismographic station.

**Gas pipeline:**

- Effects of routing on sand and gravel resources and future development
- Impact on wetlands and rare plants
- Effects of excavation and blasting on groundwater resources
- Effects on National Register of Historic Places listed and eligible sites
- Coastal zone consistency
- Compressor station noise impact

Alternative sites and processes, route modifications, and specific mitigating measures will also be considered in the DEIS. After comments from this notice are received and analyzed and the various issues are investigated, the staff will publish a DEIS entitled "Ocean State Power Project."

**Comment and Scoping Procedure**

A public scoping meeting will be held on September 3, 1987, at 7:30 p.m. in the City Council Chambers, Woonsocket City Hall, 169 Main Street, Woonsocket, Rhode Island. Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts which need to be addressed in the EIS. Anyone who would like to make an oral presentation at the meeting should contact the project manager identified below to have their name placed on the speakers list. A second speakers list will be available at the public meeting. A transcript will be made of the meeting and comments will be used to help set the scope of the DEIS.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and the public. Additional information about the project, including maps, was also mailed to everyone on the environmental document mailing list. This information is available upon request. Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of issues, including alternatives, that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before September 21, 1987, reference Docket No. CP87-132-000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period will be allotted for review and comment on the DEIS. Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 2.82(c)). After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. Lonnie Lister, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, Room 7102, 825 North Capitol Street NE., Washington, DC 20426, or call (202) 357-8883 or FTS 357-8883.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 87-19427 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-171-001, et al.]

**Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Hydro Corp. of Pennsylvania, et al.**

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.  
August 20, 1987.

Take notice that the following filings have been made with the Commission.

**1. Hydro Corporation of Pennsylvania**

[Docket No. QF86-171-001]

On August 5, 1987, Hydro Corporation of Pennsylvania (Applicant), of 28650 Grand River Avenue, Farmington Hills, Michigan 48024 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.6 MW run-of-the-river hydroelectric facility (FERC P. 3292) will be located on the East Branch of the Clarion River in Elk County, Pennsylvania. The facility will consist of a powerhouse, two turbine generators and appurtenant structures.

By order issued January 9, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a small power production facility under Docket No. QF86-171-000.

The recertification is requested due to plans to amend the project by installing a 1,000 KW piston engine in the same powerhouse with hydroelectric equipment, connecting it and the 1,000 KW turbine to the 1,000 KW generator by a common shaft. The engine can utilize either diesel fuel or natural gas. Applicant states that use of such fossil fuels will not exceed 25 percent of the facility's total energy input during any calendar year period. All other facility's characteristics remain unchanged.

**2. Lehi Cogeneration Associates**

[Docket No. QF86-1010-002]

On August 7, 1987, Lehi Cogeneration Associates (Applicant), of P.O. Box 557, Springville, Utah 84663 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle, cogeneration facility will be located in Lehi, Utah County, Utah. The facility will consist of three dual-fuel diesel engines and three heat recovery steam generators. Steam produced by the facility will be used to operate the thermal screw to produce the base growth media for mushroom, to sterilize the mushroom facilities, and to produce chilled water. The net electric power production capacity of the facility will be 16.95 MW. The primary energy source will be natural gas. Installation of the facility will begin in mid 1987.

**3. First Energy Associates**

[Docket No. QF87-585-000]

On August 7, 1987, First Energy Associates (Applicant), of 72 Spit Brook Road, Nashua, New Hampshire 03060 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Batavia, New York. The facility will consist of two combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered by the facility will be used by O-AT-KA Milk Products Cooperative, Inc., for process heating in the pasteurization and drying of milk, and via an absorption chiller for product chilling and refrigerated storage. The primary energy source for the facility will be natural gas, with No. 2 fuel oil as back-up. The net electric power production

capacity of the facility will be 65.4 MW. Installation is expected to begin in August 1988.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-19443 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-809-000]

#### Application for Certificate of Public Convenience and Necessity and for Pre-Granted Abandonment; Amalgamated Pipeline Co.

August 19, 1987

Take Notice that on August 5, 1987, Amalgamated Pipeline Company (Amalgamated), pursuant to section 7 of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, applied for a blanket certificate of public convenience and necessity to permit the sale, and pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's jurisdiction under the NGA for which producers and/or suppliers receive abandonment authority under section 7(b) of the NGA.

Amalgamated states that it is seeking authority to resell and to abandon sales of natural gas subject to the Commission's recent orders allowing producers and suppliers to abandon sales of natural gas subject to the NGA. Amalgamated is not seeking such authority with regard to any gas not previously abandoned by Commission order, nor is it seeking any transportation authority.

Amalgamated states that a grant of certificate and pre-granted abandonment authority will promote competition by enabling Amalgamated to offer a complete range of gas supplies to its customers. Amalgamated submits

that, in view of the benefits of competition, the authority sought in its application is consistent with the public convenience and necessity.

Amalgamated further requests expedited consideration of its application and, accordingly, requests omission of any intermediate decision procedure and waives its right to an oral hearing and its opportunity to file exceptions to the Commission's decision, if the Commission utilizes the expedited procedures under Rule 802 of the Rules of Practice and Procedure.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Amalgamated to appear or to be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-19423 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-683-000]

#### Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate; Lewis B. Burleson

August 20, 1987.

Take notice that on June 5, 1987, Lewis B. Burleson (Burleson) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for a three-year limited-term abandonment of his sale of gas to El Paso Natural Gas Company (El Paso) from the Farney A-5 Well, E/2 Section 5-T23S-R36E from the surface to a depth of 4,000 feet, Lea County, New Mexico. Burleson also requests three-year pregranted abandonment for sales of such gas under his small producer certificate in Docket No. CS69-36.

In support of his application Burleson states that the subject lease did not produce gas during 1986, and there are

no current sales. Burleson further states that El Paso will not buy his gas and is not paying for gas not taken.<sup>1</sup> Burleson proposes to sell the gas on the spot market. The lease was purchased from Conoco Inc. The gas is NGPA section 108 gas.

Since Burleson indicated his well is shut-in without payment and has requested that his application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the *Federal Register*, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Burleson to appear or to be represented at the hearing.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 87-19425 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-811-000]

#### Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting Pre-Granted Abandonment and for Expedited Consideration

August 19, 1987

Take notice that on August 6, 1987, CNG Trading Company (CNGT) pursuant to section 4 and 7 of the Natural Gas Act, and Part 157 of the regulations of the Federal Energy Regulatory Commission, filed for a

<sup>1</sup> The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by CNGT (2) authorizing sales for resale of natural gas by the producer suppliers from which CNGT purchases natural gas, and (3) authorizing blanket pre-granted abandonment of such sales, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The applicant requests a primary term of one year without prejudice to a possible extension. CNGT states that the authority requested in its application is consistent with the Commission's recent holding in *Citizens Energy Corp. et al.*, 39 FERC paragraph 61,106 (1987).

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rule.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19424 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-008]

**Filing of Motion to Place Tariff Sheets Into Effect, and Compliance Filing; Colorado Interstate Gas Company**

August 20, 1987.

Take notice that on August 11, 1987, Colorado Interstate Gas Company (CIG) filed a motion to place transportation tariff sheets into effect and to reduce sales standby charges effective July 14, 1987, and tendered for filing the following sheets to its FERC Gas Tariff:

**VOLUME NO. 1:**

Substitute Thirtieth Revised Sheet No. 7.

**FIRST REVISED VOLUME NO. 1-A:**

Original Sheet Nos. 1 through 3; Substitute Original Sheet No. 4; Replacement Original Sheet No. 5; Original Sheet Nos. 6 through 8; Replacement Original Sheet No. 9; Original Sheet Nos. 10 through 17; Replacement Original Sheet Nos. 18 and 19; and Original Sheet Nos. 20 through 58.

**VOLUME NO. 2:**

First Revised Sheet Nos. 885, 911, 912, 934, 964, 995, 1021, 1046, 1077, 1100, 1101, 1125, 1148, 1182, 1216, 1248, 1264, 1335, 1347, 1370, and 1421; Second Revised Sheet Nos. 517A, 593A, 697, 774, 801A, 828, and 862; Third Revised Sheet Nos. 221, 625, 662, and 674; Fourth Revised Sheet Nos. 463 and 544; Fifth Revised Sheet No. 187

CIG states that the Volume No. 1-A sheets revise earlier tariff sheets to comply with the Commission's February 13, 1987 order in Docket No. RP-87-30. The Volume No. 2 sheets reflect changes made as a result of the revision to the transportation rates set forth in Volume No. 1-A. The Volume No. 1 sheet reflects the result of CIG's July 14, 1987 compliance filing in Docket No. RP87-30.

CIG states that these tariff sheets embody an overall rate decrease, and requests that the tariff sheets be made effective July 14, 1987.

Copies of the filing were served upon CIG's jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19490 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-009]

**Filing of Motion to Place Tariff Sheets Into Effect, and Compliance Filing; Colorado Interstate Gas Co.**

August 20, 1987.

Take notice that on August 14, 1987, Colorado Interstate Gas Company (CIG) filed a motion to place tariff sheets into effect and tendered for filing the following sheets to its FERC Gas Tariff:

**VOLUME NO. 1:**

Substitute Thirtieth Revised Sheet No. 7  
Substitute Thirtieth Revised Sheet No. 8

**FIRST REVISED VOLUME NO. 1-A:**

Substitute Original Sheet No. 4

**VOLUME NO. 2:**

First Revised Sheet Nos. 885, 911, 912, 934, 964, 995, 1021, 1046, 1077, 1100, 1101, 1125, 1148, 1182, 1216, 1248, 1264, 1335, 1347, 1370, and 1421; Second Revised Sheet Nos. 517A, 593A, 697, 774, 801A, 828, and 862; Third Revised Sheet Nos. 212, 625, 662, and 674; Fourth Revised Sheet Nos. 463 and 544; Fifth Revised Sheet No. 187

CIG states that this filing replaces its two earlier filings of July 14, 1987 in Docket No. RP87-30-007, and August 11, 1987 in Docket No. RP87-30-008. The filing does not reflect any rate changes from those shown in the earlier filings, but is being filed as a matter of administrative convenience. It combines the two prior filings, since the prior filings are interrelated, and therefore more appropriately considered together in one docket. CIG states that it is withdrawing its July 14 and August 11 filings on condition that the Commission allow the rates shown in this filing to be made effective July 14, 1987.

Copies of the filing were served upon CIG's jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19491 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP87-82-000]**

**Restatement of Base Tariff Rates; Equitable Gas Co.**

August 19, 1987

Take notice that on July 31, 1987, Equitable Gas Company (Equitable) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Tenth Revised Sheet No. 6f

Equitable sells natural gas in interstate commerce under its current FERC Gas Tariff, First Revised Volume No. 1 to one customer, Revere Natural Gas Company (Revere), under Rate Schedule GS-1. The currently effective base tariff rate applicable to Revere is set forth in Equitable's Ninth Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1.

Equitable states that the purpose of this filing is to establish a new base tariff rate upon the expiration of 36 months after the effective date of equitable's last restatement of base tariff rates, in accordance with 18 CFR 154.38 of the Commission's regulations.

Based on the cost of service study included with the filing Equitable avers that the present rate under Rate Schedule GS-1 is justified. Equitable states that a comparison of the present rate, including the Gas Cost Adjustment, with the base rate indicated by the included cost of service study shows that on a total revenue basis Equitable will experience an underrecovery of costs by \$39,430 annually. Equitable does not propose an increase at this time. The new tariff sheet Equitable filed in this docket is to establish the current level of purchased gas costs in the base rates for Rate Schedule GS-1.

Equitable requests that the tariff sheets be given an effective date of September 5, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in or before August 26, 1987. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19422 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. C187-754-000]**

**Application for Retroactive Amendment of Certificate of Public Convenience and Necessity and Abandonment Authorization; Mobil Producing Texas & New Mexico Inc.**

August 20, 1987.

Take notice that on July 9, 1987, Mobile Producing Texas & New Mexico Inc. (MPTM) of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to section 7(c) of the Natural Gas Act of 1938 (NGA), 15 U.S.C.A. section 717f(c), and § 157.23 of the Federal Energy Regulatory Commission's Regulations thereunder, 18 CFR 157.23 (1986), for a certificate of public convenience and necessity to authorize retroactively certain past sales of natural gas by MPTM to ANR Pipeline Company (ANR). MPTM further requests such waivers of the Commission's Regulations as may be necessary to permit the effectiveness of such certificate authorization as requested. MPTM further applies for abandonment authorization for certain sales pursuant to section 7(b) of the NGA, 15 U.S.C.A. section 717f(b), and § 157.30 of the Commission's Regulations thereunder, 18 CFR 157.30 (1986).

MPTM requests that its certificate of public convenience and necessity be issued effective retroactively to authorize MPTM's sales of its interests in gas produced from the north half of High Island Block 596, Offshore Texas, below the base of the MP-8 Sand to ANR, commencing May 1, 1984. MPTM also requests that the terms authorized in that certificate for the sales of this gas be substantially identical to the terms of MPTM's certificate of public convenience and necessity issued in Docket No. C184-168-000.

MPTM requests that it be authorized retroactively to abandon its sales to ANR from the north half of High Island Block A-596, Offshore Texas, below the MP-8 Sand, effective as of the dates that

such sales ceased, respectively. MPTM states that it has attempted to negotiate a written agreement with ANR for the continued purchase of the subject production but to date no such document has been executed.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19426 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

**Office of Hearings and Appeals**

**Cases Filed; Week of July 24 Through July 31, 1987**

During the Week of July 24 through July 31, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of services of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

August 18, 1987.

Thomas L. Wicker,

Acting Director, Office of Hearings and Appeals.

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 24 through July 31, 1987]

Date	Name and location of applicant	Case No.	Type of submission
July 24, 1987.....	Columbia Lighting, Inc., Washington, DC.....	RR270-8	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. <i>If granted:</i> The June 24, 1987 Decision and Order (Case No. RF270-566) issued to Columbia Lighting, Inc., would be modified regarding the firm's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 24, 1987.....	Gulf/H&J, Inc., Washington, DC.....	RR40-4	Request for Modification/Rescission in the Gulf Refund Proceeding. <i>If granted:</i> The November 5, 1986 Decision and Order (Case No. RF40-0997) issued to H&J, Inc., would be modified regarding the firm's Application for Refund submitted in the Gulf Oil Company special refund proceeding.
July 24, 1987.....	Mobil Oil Corporation, Fairfax, Virginia.....	KFA-0111	Appeal of Freedom of Information Request Denial. <i>If granted:</i> Transfer pricing data for Mobil Oil Company for the period 1978 to 1981 would not be released to the law firm of Steptoe & Johnson pursuant to a July 24, 1987 Decision and Order (Case No. KFA-0103).
July 24, 1987.....	Wagner Division Cooper Industries, Inc., Washington, DC.	RR270-9	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. <i>If granted:</i> The June 24, 1987 Decision and Order (Case No. RF270-550) would be modified regarding Wagner Division's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 27, 1987.....	American Cyanamid Company, Washington, DC.	RR270-10	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. <i>If granted:</i> A June 25, 1987 Decision and Order (Case Nos. RF270-751 and RF270-1119) would be modified regarding American Cyanamid's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 27, 1987.....	Kent Oil & Trading Company, Hardin, Kentucky.	RR245-1	Request for Modification/Rescission in the Howell Refund Proceeding. <i>If granted:</i> The June 4, 1987 Decision and Order (Case No. RF245-15) would be modified regarding the Kent Oil & Trading Company's Application for Refund submitted in the Howell Refund Proceeding.
July 27, 1987.....	Montana, Helena, Montana.....	KEG-0015	Petition for Special Redress. <i>If Granted:</i> The Office of Hearings and Appeals would review the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy for the state of Montana.
July 30, 1987.....	Coble Oil Company, Treece, Kansas.....	KEE-0146	Exception to the Reporting Requirements. <i>If granted:</i> Coble Oil Company would not be required to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Products Sales Report".

## REFUND APPLICATIONS RECEIVED

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/28/87.....	Amoco I & II/Sisseton-Wahpeton Sioux Tribe.	RQ21-387
7/24/87.....	Crude Oil Refund Applications Received.	RQ251-388
thru.....	thru.....	RF272-2531
7/31/87.....	Sylvia Smith.....	RF272-3081
7/27/87.....	Sylvia Smith.....	RF265-2473
7/27/87.....	Eldred Bowne.....	RF265-2474
7/27/87.....	Eldred Bowne.....	RF265-2475
7/27/87.....	Tuck Industries, Inc.....	RF265-2476
7/27/87.....	Grass Lands Service Station.....	RF277-78
7/28/87.....	Farmland Industries, Inc.....	RF265-2477
7/28/87.....	J and F Service Center.....	RF263-26
7/28/87.....	Ken's Skelly Service.....	RF265-2478
7/28/87.....		RF265-2479

## REFUND APPLICATIONS RECEIVED—Continued

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/26/87.....	Chambersburg Area School District.	RF297-4
2/17/87.....	Laney Oil Company, Inc.....	RF225-10871
2/17/87.....	Laney Oil Company, Inc.....	RF225-10872
2/17/87.....	Laney Oil Company, Inc.....	RF225-10873
2/17/87.....	Laney Oil Company, Inc.....	RF225-10874
12/2/87.....	Laney Oil Company.....	RF225-10875
7/28/87.....	A. T. Edwards, Inc.....	RF265-2480
7/28/87.....	A. T. Edwards, Inc.....	RF265-2481
7/28/87.....	A. T. Edwards, Inc.....	RF265-2482
7/29/87.....	Wyoming Gas & Oil Company.	RF265-2483
7/29/87.....	Wyoming Gas & Oil Company.	RF265-2484
7/29/87.....	Wyoming Gas & Oil Company.	RF265-2485

## REFUND APPLICATIONS RECEIVED—Continued

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/30/87.....	Ronnie Black's Auto Parts.....	RF265-2486
7/30/87.....	Dick's Skelly.....	RF265-2487
7/30/87.....	High Forest Truck Stop.....	RF265-2488
7/30/87.....	High Forest Truck Stop.....	RF265-2489
7/30/87.....	Ellendale Truck Plaza.....	RF265-2490
7/30/87.....	Johnson's Skelly Station.....	RF265-2491
7/30/87.....	Hiawathaland Truck Plaza.....	RF265-2492
7/30/87.....	Kelly's Skelly Service.....	RF265-2493
7/30/87.....	Parrett's Skelly.....	RF265-2494

[FR Doc. 87-19388 Filed 8-24-87; 8:45 am]

BILLING CODE 6450-01

**ENVIRONMENTAL PROTECTION AGENCY**

(OPTS-140085; FRL-3252-1)

**Access to Confidential Business Information by General Science Corporation****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, General Science Corporation (GSC) of Laurel, MD for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATE:** Access to the confidential data submitted to EPA will occur no sooner than September 9, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Officer of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4281, EPA's contractor GSC, 6100 Chevy Chase Drive, Suite 200, Laurel, Maryland will assist the Office of Toxic Substances' Exposure and Evaluation Division in using computerized procedures and models to estimate physicochemical properties of chemicals, to assess the fate of chemicals in receiving environments, and to estimate human and environmental exposure.

In previous notices published in the *Federal Register* of January 31, 1985 (50 FR 4591) and October 24, 1986 (51 FR 37786), EPA announced, under contract no. 68-02-3970, authorization by GSC for access to TSCA CBI to perform functions similar to those under this contract.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract no. 68-02-4281, GSC will require access

to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. GSC personnel will be given access to information submitted under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide GSC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 15, 1990.

GSC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 17, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-19432 Filed 8-24-87; 8:45 am]

BILLING CODE 6560-50-M

**FEDERAL MARITIME COMMISSION****Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-010880-001.

*Title:* Georgia Port Authority Terminal Agreement.

*Parties:*

Georgia Ports Authority (GPA)  
Hanjin Container Lines, Ltd.

*Synopsis:* The proposed agreement would permit GPA to consolidate all rent and certain service charges into a single unit rate.

*Agreement No.:* 224-004165-003.

*Title:* Georgia Port Authority Terminal Agreement.

*Parties:*

Georgia Ports Authority (GPA)  
Hapag-Lloyd, A.G.  
Gulf Container Line B.V.  
Compagnie Generale Maritime

*Synopsis:* The proposed agreement substitutes Gulf Container Line as a party to the agreement in place of Intercontinental Transport B.V.

*Agreement No.:* 224-200021.

*Title:* Port of Houston Terminal Agreement.

*Parties:*

Port of Houston Authority  
Biehl & Company (Assignee)

*Synopsis:* The proposed agreement provides for Assignee, an independent contractor, to perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 27 through 29 subject to the charges, rates, rules and regulations in the Port's Tariff No. 8. The term of the agreement ends December 31, 1988.

*Agreement No.:* 224-200022

*Title:* Port of Houston Terminal Agreement.

*Parties:*

Port of Houston Authority Lykes Bros.  
Steamship Company, Inc.

*Synopsis:* The proposed agreement provides for freight handling services at Transit Sheds Number 30 through 35, for loading cargo onto or unloading cargo from railroad cars and motor vehicles, allocating space within Facility to accommodate cargo of ships assigned to berth and incidental services necessary to expedite the movement of cargo between vessels and land carriers.

*Agreement No.:* 224-200023.

*Title:* Port of Houston Terminal Agreement.

*Parties:*

Port of Houston Authority  
Provident Warehouse Company  
(Assignee)

*Synopsis:* The proposed agreement provides for Assignee, an independent contractor, to perform or have performed freight handling services at the Port's Manchester Wharf and Transit Shed Number 2 subject to the charges, rates, rules and regulations in the Port's Tariff No. 8. The term of the agreement ends December 31, 1988.

*Agreement No.:* 224-200024.

*Title:* Port of Houston Terminal Agreement.

*Parties:*

Port of Houston Authority  
Strachan Shipping Company of Texas

*Synopsis:* The proposed agreement provides for freight handling services at

Wharves and Transit Sheds Number 1 through 3 and 24 through 26, for loading cargo onto or unloading cargo from railroad cars and motor vehicles, allocating space to accommodate cargo of ships assigned to berth and facility, and other incidental services to expedite the movement of cargo between vessels and land carriers.

Agreement No.: 224-200020.

Title: Port of Portland Terminal Lease Agreement.

Parties:

Port of Portland (Port)

Stevedoring Services of America, Inc. (SSA)

Synopsis: The proposed agreement provides that the Port will lease to SSA the Premises (approximately 6,000) known as the Terminal 2 gearlock storage shed for storage of SSA's owned or leased stevedoring equipment only. The term of the agreement shall commence on the date designated by FMC and shall continue until July 10, 1990 or any extension thereof, as provided in the original Agreement.

By Order of the Federal Maritime Commission

Dated: August 20, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-19459 Filed 8-24-87; 8:45 am]

BILLING CODE 6730-01-M

#### Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information, and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the *Federal Register* in which this notice appears.

#### Summary of Item Submitted for OMB Review

##### 46 CFR Part 580

FMC requests extension of clearance for the Commission's regulation to enforce the tariff filing provisions of section 8 of the Shipping Act of 1984.

The rule requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, fares, and charges for transportation between U.S. and foreign ports and between points on any through route which is established.

For approximately 2,105 respondents, the Commission estimates 593,899 annual responses and 214,787 annual manhours. Total estimated annual cost to the Government is \$1,030,000; estimated annual cost to the public is \$3,850,269.

Joseph C. Polking,

Secretary.

[FR Doc. 87-19460 Filed 8-24-87; 8:45 am]

BILLING CODE 6730-01-M

#### FEDERAL RESERVE SYSTEM

##### Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Amsouth Bancorp., et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 14, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation*, Birmingham, Alabama; to acquire Gulf Coast Realty Group, Inc., Pensacola, Florida, and thereby engage in the business of appraising commercial and residential properties pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illinois Corporation*, Evanston, Illinois; to acquire Multi-Family Resources, Inc., New York, New York, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) and in arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to engage in data processing activities of Century Bank, Phoenix, Arizona, through M&I Data Services, Inc., pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by September 9, 1987.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Norwest Mortgage, Inc., Des Moines, Iowa, and thereby engage in general mortgage banking activities pursuant to § 225.25(b)(1) and underwriting and dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19389 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

##### Applications To Engage de Novo in Permissible Nonbanking Activities; Bank of New England Corp., et al.

The companies listed in this notice have filed an application under

§ 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1987.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BNE Capital Corporation, Boston, Massachusetts, in the leasing of personal or real property by investing in special purpose leasing partnerships pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by September 11, 1987.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Sunshine Bankshares Corporation*, Fort Walton Beach, Florida; to engage *de novo* in consumer financial

counseling services, specifically financial management including money management, budgeting, tax planning, retirement, insurance, debt structuring, and general investment management, pursuant to § 225.25(b)(20) of the Board's Regulation Y. These activities will be conducted throughout the states of Alabama, Florida, and Georgia. Comments on this application must be received by September 17, 1987.

**C. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Central Banking Systems, Inc.*, San Francisco, California; to engage *de novo* through its subsidiary, CB Insurance Agency, Inc., Walnut Creek, California, in general insurance agency and brokerage activities for the sale of all types of personal and commercial insurance to the general public pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y and to expand the geographic area served by its subsidiary to include the United States.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19390 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

#### **Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Keycorp, et al.**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Keycorp*, Albany, New York; to acquire 100 percent of the voting shares of Commercial Security Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Commercial Security Bank, Ogden, Utah, which engages, through a wholly-owned subsidiary, in the activities of an insurance agency for the sale of insurance, such as credit life, and disability in connection with loans made by bank.

In connection with this application, Key Bancshares of Utah, Inc., Salt Lake City, Utah, has applied to become a bank holding company by acquiring Commercial Security Bancorporation.

**B. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Pennsylvania Corporation*, Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of First Pennsylvania Bank (NJ), National Association, Evesham Township, New Jersey, a *de novo* bank. Comments on this application must be received by September 17, 1987.

**C. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia, and Commerce Union Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of Security Bank and Trust Company, Centerville, Tennessee. Comments on this application must be received by September 17, 1987.

**D. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marine Corporation*, Springfield, Illinois; to acquire 100 percent of the voting shares of Commercial Bancshares, Inc., Champaign, Illinois, and thereby indirectly acquire The Commercial Bank of Champaign, Champaign, Illinois. Comments on this application must be received by September 17, 1987.

**E. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Colonial Bancshares, Inc.*, Des Peres, Missouri; to acquire 10 percent of

the voting shares of The Village Bank of St. Louis County, St. Louis County, Missouri, a *de novo* bank.

F. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and *Norwest Financial Services, Inc.*, Des Moines, Iowa; to acquire 100 percent of the voting shares of *Dial National Bank*, Des Moines, Iowa.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19391 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

**Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; McNeill Trading and Investments, Ltd.**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *McNeill Trading and Investments, Ltd.*, Thomas, Oklahoma; to acquire 24.99 percent of the voting shares of *Thomas Bancshares, Inc.*, Thomas, Oklahoma, and thereby indirectly acquire *Bank of Thomas*, Thomas, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19392 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

**Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Companies; Old Kent Financial Corp.**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." And request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Old Kent Financial Corporation*,

Grand Rapids, Michigan; to acquire 100 percent of the voting shares of *Illinois Regional Bancorp, Inc.*, Elmhurst, Illinois, and *Plum Grove Bancorporation, Inc.*, Rolling Meadows, Illinois, and thereby indirectly acquire *Illinois Regional Bank N.A.*, Elmhurst, Illinois; *Illinois Regional Bank*, Naperville, Illinois; *Illinois Regional Bank N.A.*, St Charles, Illinois; *Colonial Trust and Savings Bank*, Peru, Illinois; *Illinois Regional Bank Bureau County*, Princeton, Illinois; and *First Commercial Bank of Rolling Meadows*, Rolling Meadows, Illinois.

In connection with this application, Applicant also proposes to acquire *Illinois Regional Mortgage Corporation*, Oakbrook, Illinois, and thereby engage in mortgage brokering activities pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19393 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transactions Granted Early Termination  
Between: 072987 and 081787

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated	Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Forbo SA	87-1948	07/29/87	Pioneer Savings Bank		
Day International Corp.			Enterprise Building Corp.		
L.E. Carpenter and Co.			Xerox Corp.	87-2045	08/03/87
APL Corporation	87-1880	07/29/87	Furman Selz Holding Corp.		
Fischbach Corp.			Furman Selz Holding Corp.		
Fischbach Corp.			Chrysler Corporation	87-1719	08/04/87
Westinghouse Electric Corp.	87-1991	07/29/87	American Motors Corp.		
Beneficial Corp.			American Motors Corp.	87-1720	08/04/87
Beneficial Corp.			Chrysler Corporation		
Weyerhaeuser Company	87-1758	07/30/87	American Motors Financial Corp.	87-1722	08/04/87
The Mead Corp.			Chrysler Corporation		
6 Mead paper board plants			American Motors Corp.	87-1929	08/04/87
Brierley Investments Limited	87-1884	07/30/87	American Motors Corp.		
Molins PLC			Danaher Corporation		
Molins PLC			Ammco Tools, Inc.	87-1945	08/04/87
Gulf & Western Inc.	87-1969	07/30/87	Ammco Tools, Inc.		
Regenstein Publishing Enterprises, Inc.			SCI Associates, L.P.		
Regenstein Publishing Enterprises, Inc.			SCI Television, Inc.	87-1948	08/04/87
MS/S&H Holdings, Inc.	87-1979	07/30/87	SCI Television, Inc.		
Monsanto Co.			Siemens Aktiengesellschaft		
Monsanto Co.			Sybron Corporation	87-1963	08/04/87
Michaels Stores, Inc.	87-2017	07/30/87	Nalge Company-Midwest Division		
Moskato's, Inc.			SCI Associates, L.P.	87-1964	08/04/87
Moskato's, Inc.			SCI Associates, L.P.		
Household International, Inc.	87-2029	07/30/87	SCI Associates, L.P.		
TSO Financial Corp.			George N. Gillett, Jr.	87-1955	08/04/87
Colonial National Bank			SCI Associates, L.P.		
Valmont Industries, Inc.	87-2035	07/30/87	SCI Television, Inc.		
General Electric Co.			SCI Television, Inc.		
Ballast Products Section			Lydia Kalmanovitz	87-1974	08/04/87
Kellwood Company	87-1892	07/31/87	Falstaff Brewing Corp.		
Robert E. Madden			Falstaff Brewing Corp.		
Robert Scott Ltd. and voting securities of David Brooks			Bon Secours Health System, Inc.	87-1975	08/04/87
Courtauld PLC	87-1995	07/31/87	St. Joseph Healthcare Group, Inc.		
Martin Processing, Inc.			St. Joseph Healthcare Group, Inc.	87-2002	08/04/87
Martin Processing, Inc.			Compagnie de Saint-Gobain		
Minstar, Inc.	87-1912	07/31/87	Bay Mills Limited		
Hugh Hall, Jr.			Bay Mills Limited		
Glastron Boat Co., Glastron-Conroy, Ltd., Hall Land Co.			Ferranti plc	87-1896	08/05/87
Continental Gummi-Werk, Aktiengesellschaft	87-1956	07/31/87	Allegheny International, Inc.		
GenCorp, Inc.			Skiy Bros., Inc.		
General Tire, Inc. and GenCorp Realty Co.	87-1986	07/31/87	The Miller Group Ltd.	87-2025	08/05/87
George Soros			Alloy Partners		
Fairchild Industries, Inc.			Alloy Rods Corp.		
Fairchild Industries, Inc.			Powder Mill Corp.	87-2039	08/05/87
John Hancock Mutual Life Insurance Co.	87-2026	07/31/87	Gerard P. Joyce		
Westvaco Corp.			Patrick Media Group	87-2040	08/05/87
Westvaco Corporation timberland			Donald H. Gales		
Texas Air Corp.	87-2054	07/31/87	L.B. Foster Co.		
Southwest Airlines Co.			Foster Acquisition Corp.		
Southwest Airlines Co.			Ashland Oil, Inc.	87-1905	08/06/87
Dixie Group plc	87-2001	08/01/87	Tanner Southwest, Inc.		
Sylvan Kaplan and Doris Kaplan			Tanner Southwest, Inc.		
Tipton Centers, Inc.			Landmark Land Company, Inc.	87-2041	08/06/87
Pacific Telesis Group	87-1943	08/03/87	Olympia & York Developments Limited		
Unified Partnership			First Canadian Development Co.		
Unified Partnership			MOET-HENNESSY	87-2042	08/06/87
Pacific Telesis Group	87-1944	08/03/87	Louis Vuitton		
Detroit Cellular Telephone Co.			Louis Vuitton		
Detroit Cellular Telephone Co.			Hawker Siddeley Group Public Limited Company	87-2046	08/06/87
Bausch & Lomb, Inc.	87-1949	08/03/87	Aerospace Avionics, Inc.		
Assad Sawaya			Aerospace Avionics, Inc.		
Pharmatrain, Inc.			J.B. Poindexter c/o J.B. Poindexter & Co.	87-2056	08/06/87
Barris Industries, Inc.	87-1981	08/03/87	John M. Collins		
Reeves Communications Corp.			Leer Holdings, Inc.		
Reeves Communications Corp.			Masco Corporation	87-2071	08/06/87
MS/S&H Holdings, Inc.	87-1984	08/03/87	Dixie Furniture Company, Inc.		
Nestle S.A.			Dixie Furniture Company, Inc.		
Nestle S.A.			John Winthrop	87-2073	08/06/87
Delchamps, Inc.	87-1993	08/03/87	Citicorp		
Inos Heard			Mr. John Winthrop	87-2074	08/06/87
Western Super Markets Management Co.			MaceRich Regional Centers Associates		
RFS Equity Partners	87-2010	08/03/87	MaceRich Regional Centers Associates		
Foods Co. Markets, Inc.			Masco Corporation	87-2076	08/06/87
Foods Co. Markets, Inc.			Link-Taylor Corp.		
Georgetown Industries, Inc.	87-2038	08/03/87	Link-Taylor Corp.		
Waccamaw Corp.			Masco Corporation	87-2077	08/06/87
Waccamaw Corp.			Young-Hinkle Corp.		
Halliburton Company	87-2044	08/03/87	Young-Hinkle Corp.		
			Smith Investment Company	87-2087	08/06/87
			Craig H. Tuber		
			Berlin Industries, Inc.		
			General Cinema Corporation	87-2094	08/06/87
			Carter Hawley Hale Stores, Inc.		
			The Nieman-Marcus Group, Inc.		
			National Property Analysts, Inc.	87-2022	08/07/87
			Macerich Community Centers Associates		
			Macerich Community Centers Associates		
			General Development Corp.	87-2027	08/07/87
			Burton A. Bines		
			Florida Residential Communities, Inc.		
			Health Care Property Investors, Inc.	87-2103	08/07/87
			Genesis Health Ventures, Inc.		
			Genesis Health Ventures, Inc.		
			Thompson Capital Partners, L.P.	87-2133	08/07/87
			J.T. Acquisition Corp.		
			J.T. Acquisition Corp.		
			Curtis G. Anderson	87-2036	08/10/87
			Ceco Industries, Inc.		
			The Joist Company, Inc.		
			American Financial Corporation	87-2050	08/10/87
			Robert L. White		
			Mr. B's Oil Co., Inc.		
			FKI Electricals PLC	87-2061	08/10/87
			Babcock International plc		
			Babcock International plc		
			Universal Furniture Limited	87-2062	08/10/87
			Bench Craft, Inc.		
			Bench Craft, Inc.		
			KaiserTech Limited	87-2066	08/10/87
			Chevron Corp.		
			Harshaw Chemical Co.		
			TW Services, Inc.	87-2069	08/10/87
			DHI Corp.		
			DHI Corp.		
			Pratt Family Holdings Trust	87-2079	08/10/87
			Temple-Inland, Inc.		
			Georgia Kraft Co.		
			Pratt Family Holdings Trust	87-2080	08/10/87
			The Mead Corp.		
			Georgia Kraft Co.		
			Georgia-Pacific Corporation	87-2099	08/10/87
			Pratt Family Holdings Trust		
			Visy Board, Inc.		
			Lawrence A. Busse, c/o Busse Broadcasting Corporation	87-1990	08/11/87
			George N. Gillett, Jr.		
			6 subsidiaries		
			PDA, Inc.	87-1992	08/11/87
			BTR plc		
			D.L. Saslow Co., Inc.		
			Dana Corporation	87-2049	08/11/87
			Deluxe Check Printers, Inc.		
			DLX Finance, Inc.		
			The Mutual Life Insurance Company of New York	87-2015	08/12/87
			Gerald J. Kazma		
			Community Cablesystems, Inc./Amzak Cable of Texas Inc.		
			Elders IXL Limited	87-2028	08/12/87
			George A. & Olivia G. Lincoln		
			Lincoln Grain, Inc. and Fremont & Western, Inc.		
			Warburg, Pincus Capital Company, L.P.	87-2052	08/12/87
			Samuel A. Horvitz Testamentary Trust		
			The Mansfield Journal Co.		
			Ralph M. Ingersoll II	87-2053	08/12/87
			Samuel A. Horvitz Testamentary Trust		
			The Mansfield Journal Co.		
			Phillips-Van Heusen Corporation	87-2089	08/12/87
			Unilever PLC/Unilever NV		
			5 subsidiaries		
			Xerox Corporation	87-1989	08/13/87
			Katun Corp.		
			Katun Corp.		
			Herbert H. Haft	87-2031	08/13/87
			Dayton Hudson Corp.		
			Dayton Hudson Corp.		
			Hawaiian Electric Industries, Inc.	87-2081	08/13/87
			Forvine Associates Limited Partnership		
			Forvine Associates Limited Partnership		
			Hawaiian Electric Industries, Inc.	87-2082	08/13/87
			Dalco Associates Limited Partnership		
			Dalco Associates Limited Partnership		
			The Prudential Insurance Company of America	87-2088	08/13/87

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Phillips-Van Heusen Corp. Phillips-Van Heusen Corp. Jerrico, Inc. Donald K. Poole. Silver's Enterprises. Royal Dutch Petroleum Company. Occidental Petroleum Co. Occidental Petroleum Co. Gefinor S.A. Textron, Inc. Sheaffer-Eaton Division. The Merchant Navy Officers Pension Fund Tiffany & Co. Tiffany & Co. National Realty, L.P. University High Equity Real Estate Fund II. University High Equity Real Estate Fund II. Litton Industries, Inc. Harvey E. Wagner. Integrated Automation, Inc. Lomas & Nettleton Financial Corporation First Continental Life Group, Inc. First Continental Life Group, Inc. E.I. du Pont de Nemours and Company Mobil Corp. Mobil Oil Corp. Philip D. Kallenbacher S Acquisition Corp. S Acquisition Corp. Philip D. Kallenbacher Seton Corp. Seton Corp. Dover Corporation The Rymer Company. Duncan Industries Parking Control Systems Inc. Ryobi Limited Inertia Dynamics Corp. Inertia Dynamics Corp. Agip S.p.A. Mr. Edwin L. Cox, Sr. Cox Oil and Gas. Contel Corporation Communications Satellite Corporation (COMSAT). COMSAT Intl. Communications/COMSAT Technology Products. Brierley Investments Limited Del E. Webb Corp. Del E. Webb Corp. South Timbers Ltd. Partnership-West-Timbers Ltd. Part. Royal Dutch Petroleum Co. Royal Dutch Petroleum Co. Heilig-Meyers Company Reliable Stores, Inc. Reliable Stores, Inc. THORN EMI plc. Rent-A-Center, Inc. Rent-A-Center, Inc. THORN EMI plc. Rent-A-Center, Inc. Rent-A-Center, Inc.	87-2110 87-2117 87-2121 87-1941 87-2032 87-2078 87-2113 87-2130 87-2137 87-2139 87-2146 87-2097 87-1995 87-1999 87-2037 87-2116 87-2124 87-2169 87-2170	08/13/87 08/13/87 08/13/87 08/14/87 08/14/87 08/14/87 08/14/87 08/14/87 08/14/87 08/14/87 08/14/87 08/15/87 08/16/87 08/16/87 08/17/87 08/17/87 08/17/87 08/17/87 08/17/87

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 87-19410 Filed 8-24-87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

#### Grant with the State of Missouri Department of Health; Availability of Funds for Fiscal Year 1987

##### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1987 to continue a project with the State of Missouri Department of Health, to assist in maintaining their central listing of persons exposed to TCDD (dioxin) as part of the National Registry. This is not a formal request for applications. Assistance will be provided only to the State of Missouri Department of Health for the continued support of this project. No other applications are solicited or will be accepted.

##### Authority

Section 104(i)(1-A) and (8) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes this grant. The Catalog of Federal Domestic Assistance Number has been requested.

##### Background

In 1971, sludge wastes containing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) were mixed with oils and sprayed for dust control on various residential, recreational, and commercial areas in the state of Missouri. As of October 1986, 43 sites in Missouri confirmed as having at least 1 part per billion of TCDD in soil were related to disposal of waste from a hexachlorophene production facility in Verona, Missouri. To investigate these TCDD contaminations, investigators have undertaken several studies. Results of a pilot epidemiological study indicated that additional studies should be carried out to examine possible effects on the urinary tract, liver, and the neurological and immunological systems. In April 1986, results reported from the larger Quail Run, Missouri study showed that persons exposed to TCDD in a residential setting did not have any statistically significant increased prevalence of clinical illness diagnosed by a physician; had no significant pattern of differences on medical history, physical examination, serum and urinary chemistry studies, or on neurologic tests; showed some differences on liver function test results

that may serve as a biological marker of exposure or as a sign of subclinical effects; and had an increased prevalence of energy and relative energy on immune tests, compared with person who were not known to have been exposed to TCDD. Repeat studies of persons with energy and relative energy approximately 1 year later have shown no evidence of increased illness, persisting energy or relative energy, or in vitro immunologic abnormalities. These findings suggest that additional studies are needed to develop a more complete understanding of the risks to an appropriate public health interventions for, communities exposed to environmental dioxins.

Concurrent with the medical epidemiological studies a central listing of potentially exposed persons to TCDD was initiated. This listing will enable public health agencies to keep in touch with and locate potentially exposed persons to notify them of health effects, preventive measures and therapeutic advances; facilitate health surveillance programs; and facilitate epidemiologic or health studies.

#### Reasons for proposing the State of Missouri Department of Health as Recipient of This Grant Program

The Centers for Disease Control provided assistance to the State of Missouri starting in 1983 to determine the population exposed to TCDD's and the effects on their health. As a part of that project the State of Missouri began compilation of a central listing of persons potentially exposed to TCDD's. ATSDR intends to continue to support this unique compilation of individuals and the process that the State of Missouri has employed to ensure its ongoing availability. The individuals now on the listing and those eligibles recruited onto it will enable the Missouri Department of Health to notify participants of advances concerning the health effects of TCDD, provide an easily accessible group if future studies are necessary, and by serving as an example, provide an exposure registry which may be applicable to other States and other contaminated sites.

#### Availability of Funds

Approximately \$175,000 will be available in Fiscal Year 1987 to fund this grant. It is expected that the grant will began on or about September 30, 1987, and depending upon the availability of funds, will be funded in 12 month budget periods within a total 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives

and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

#### Submission Requirements

The application will not be subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

#### Information

Information may be obtained from Mr. Luther DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd. NE., Atlanta, GA 30305, telephone (404) 262-6575. Technical assistance may be obtained from E. David Evans, Project Officer, Extramural Program Branch, Office of External Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 454-4630.

Dated: August 19, 1987.

Donald R. Hopkins,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 87-19378 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-70-M

#### Food and Drug Administration

[Docket No. 87F-0252]

#### NutraSweet Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.  
ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that NutraSweet Co. has filed a petition proposing that the food additive regulations be amended to provide for the use of aspartame as a sweetener and flavor enhancer in hard candies and cough drops.

#### FOR FURTHER INFORMATION CONTACT:

Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7A4015) has been filed by NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the use of aspartame as a sweetener and flavor enhancer in hard candies and cough drops.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: August 13, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-19397 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-01-M

#### Health Resources and Services Administration

#### Program Announcement for Grants for Faculty Development in Family Medicine; Fiscal Year 1988

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

To receive support, programs must meet the requirements of regulations at 42 CFR Part 57, Subpart Q.

#### Funding Preferences

As specified in the regulations for this program, 42 CFR 57.1605(b)(2)(iii), a

funding preference will be accorded approved applications for projects which emphasize increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

Additional funding preferences will be given to applicants who provide directly or through affiliated medical schools, incentives for minority persons to enter academic medicine; and, for applicants whose projects are designed to develop faculty competence for teaching geriatric content and/or develop educational materials for teaching geriatric content to family medicine students, residents and practitioners.

The deadline date for receipt of applications is November 20, 1987.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: August 19, 1987.

John H. Kelso,

Deputy Administrator.

[FR Doc. 87-19398 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-15-M

### Program Announcement; Funding Preferences and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 787 authorizes the Secretary to make grants to schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by this section includes: recruitment, preliminary education, retention in health and allied health professions schools, counseling and advice on financial aid.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

The statute requires that not less than 80 percent of the funds appropriated in any fiscal year must be obligated for grants or contracts to institutions of higher education. Also, not more than five percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

To receive support, applicants must meet the requirements of the program regulations which are located at 42 CFR Part 57, Subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants

Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is November 6, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

### Funding Preferences

The following funding preferences will govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1988. These preferences were published in a *Federal Register* notice dated September 12, 1983 (48 FR 40958).

An applicant may request consideration in one of the following five funding preferences:

(1) Health professions school which has Educational Assistance Agreement(s) (EAA) with no more than five undergraduate institutions that separately or collectively satisfy the definition of a feeder institution and who are requesting HCOP support only for:

a. The feeder institution(s) or equivalent to provide individuals from disadvantaged backgrounds with preliminary education; and

b. Either the health professions school or the feeder institution to facilitate the entry of individuals from disadvantaged backgrounds into health professions schools; and

c. The health professions school to provide individuals from disadvantaged backgrounds who are enrolled in their institution(s) with counseling or other retention services.

(2) A feeder institution requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(3) A health professions school requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into its health professions school; and

b. Providing the students who are individuals from disadvantaged backgrounds with counseling or other retention services.

(4) A joint application from two to five institutions of higher education, which, as a group: (1) Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; (2) has 20 or more graduates annually (as averaged over the last three years) who are disadvantaged individuals and who are accepted into health professions schools; and (3) is requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(5) A training center for allied health professions requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into allied health training centers; and

b. Providing its students who are individuals from disadvantaged backgrounds with counseling or other retention services.

Greatest weight will be given to applicants in funding preference Number 1 decreasing, respectively, to funding preference Number 5.

The five preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for the preferences are encouraged to submit applications.

The applicant must indicate on the upper right-hand corner of page one of the application the funding preference in which the applicant wishes consideration. However, the final determination of the category of funding preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one preference. A feeder institution which is identified in an EAA may not apply as a primary grantee to support the same type of HCOP activities. Consideration will be given to assure that funded

projects represent a reasonable proportion of the health professions specified in the legislation. However, full consideration will also be given to ensure that final funding decisions include appropriate support of proposals and students representative of the targeted populations served by HCOP.

#### Definitions

As used in this notice: "Educational Assistance Agreement (EAA)" means a formal agreement between the grantee and another school or entity to assure continuity of training through health or allied health professions schools. This agreement must provide for financial or other support (excluding direct student aid) for this purpose and support may include funds from the grant awarded under this program, also joint use of facilities, staff, and faculties. An EAA must:

- Contain the names of the participating institutions;
- Identify the prime grantee, subcontractors, and other participating institutions;
- State the HCOP purposes addressed by each participating institution;
- Identify the specific activities to be performed by the grantee, including a description of program activities and administrative responsibilities;
- Identify the specific activities to be performed by all collaborating institutions, including a description of program activities;
- Contain a detailed description of proposed expenditures for each participating institution;
- Contain a description of how facilities, faculty, and staff will be shared, including times, places, and dates;
- State the duration of the EAA;
- Contain the terms for amending the EAA; and
- Be signed by the President, Chancellor, Dean, or equivalent official from each participating institution or health or educational entity.

"Feeder institution" means an institution of higher education meeting the requirements of section 435 of the Higher Education Act, (20 U.S.C. 1085(b)), which:

- Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; and
- Had ten or more graduates annually (as averaged over the last three years) who are disadvantaged and who are accepted into health professions schools.

"Health professions school" means a school of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, podiatry, public

health, or chiropractic or a graduate program in health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a disadvantaged background" means an individual who (a) comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for Fiscal Year 1988:

Size of parents' family <sup>1</sup>	Income level <sup>2</sup>
1	\$7,400
2	9,500
3	11,400
4	14,500
5	17,200
6 or more	19,300

<sup>1</sup> Includes only dependents listed on Federal income tax forms.

<sup>2</sup> Adjusted gross income for calendar year 1986, rounded to \$100.

"Training center for allied health professions" means a junior college, college, or university, as defined in section 795 of the Public Health Service Act, which:

- Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:  
Clinical Psychologist  
Master's Degree:  
Speech Pathologist/Audiologist  
Bachelor's Degree:  
Dental Hygienist  
Dietitian (Coordinated undergraduate program)  
Community Health Educator  
Health Services Administrator  
Medical Records Administrator  
Medical Technologist  
Occupational Therapist  
Physical Therapist  
Primary Care Physician Assistant  
Sanitarian (Environmental Health)  
Associate Degree:  
Clinical Dietetic Technician  
Cytotechnologist  
Dental Assistant  
Dental Hygienist

Dental Laboratory Technician  
Medical Assistant  
Medical Laboratory Technician  
Medical Records Technician  
Occupational Therapy Assistant  
Ophthalmic Medical Assistant  
Optometric Technician  
Physical Therapy Assistant  
Radiologic Technologist  
Respiratory Therapist  
Sanitarian Technician

- Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

- Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

#### Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through four program technical assistance conferences. The conferences are for the benefit of potential applicants and current grantees.

The four conferences will be held as follows:

##### Bethesda, Maryland

August 31–September 1, 1987—Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652-2000

##### Minneapolis, Minnesota

September 10–11, 1987—Omni North Star Hotel, 618 2nd Avenue, South Minneapolis, Minnesota 55402 (612) 338-2288

##### Los Angeles, California

September 14–15, 1987—Pacifica Hotel and Conference Center, 616 Centinela Avenue, Culver City, California 90230 (213) 649-1776

##### Birmingham, Alabama

September 17–19, 1987—Civic Center Plaza Ramada Hotel, 901 21st Street, North Birmingham, Alabama 35203 (205) 322-1234

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Status of the legislation; application requirements; and grants management information. There will be small work groups to critique specific points in development of applications including evaluation considerations which arise in the review process. Significant focus of the conferences will be directed toward: Program activities and reporting requirements of current grantees; the relative merit of strategies employed to facilitate entry of disadvantaged students into health professions schools; and both current and projected academic issues affecting disadvantaged students in health professions schools.

Participation in the technical assistance meetings does not insure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. William J. Holland, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8-20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4493.

Dated: August 2, 1987.

David N. Sundwall,  
Administrator, Assistant Surgeon General.  
[FR Doc. 87-19399 Filed 8-24-87; 8:45 am]  
BILLING CODE 4160-15-M

## Public Health Service

### Public Health Emergencies; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of July 23, 1987 (52 FR 28608), by the Assistant Secretary for Health, the Director, Centers for Disease Control, has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate within the Health Resources and Services Administration, all the authorities delegated to the Director, Centers for Disease Control, under section 319, Title III, of the Public Health Service Act, as amended, concerning Public Health Emergencies, insofar as they pertain to the award to States of the \$30 million supplemental appropriation for covering the cost of Azidothymidine and other drugs approved by the Food and Drug Administration for the treatment of patients with acquired immune deficiency syndrome (AIDS).

The delegation to the Administrator, Health Resources and Services Administration, became effective on August 6, 1987.

Dated: August 11, 1987.

Glenda S. Cowart,  
Acting Director, Office of Program Support,  
Centers for Disease Control.  
[FR Doc. 87-19379 Filed 8-24-87; 8:45 am]  
BILLING CODE 4160-18-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-930-07-4410-10]

#### Management Framework Plan; Schell Resource Area, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent (NOI) to terminate the proposal to amend the Schell Management Framework Plan (MFP). The original NOI to amend the plan was published in the February 11, 1987, Federal Register.

**SUMMARY:** This notice contains the rationale for terminating the amendment to the Schell MFP. Several comments were received as a result of the notice of intent which invited participation from the public in identification of issues and review of the preliminary planning criteria.

As a result of comments contained in these letters and additional analysis by the Bureau of Land Management, it is concluded that the amendment is inappropriate at this time, analysis has been suspended and the proposed amendment is terminated. The Schell Resource Area (RA) will continue to operate within the scope of the present MFP. If, in the future, further planning actions are deemed appropriate in the Schell RA, a new NOI will be published.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Smith, Schell Area Manager, Star Route 5, Box 1, Ely, Nevada 89301, telephone (702) 289-4865.

Dated: August 17, 1987.

Edward F. Spang,  
State Director, Nevada.  
[FR Doc. 87-19468 Filed 8-24-87; 8:45 am]  
BILLING CODE 4310-HC-M

[CA-940-07-5410-10-ZBJE; CA 20605]

#### Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; conveyance of the reserved mineral interests.

**SUMMARY:** @The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 2, 1986.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

#### FOR FURTHER INFORMATION CONTACT:

Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

San Bernardino Meridian, CA 20605

T. 17 S., R. 2 E.,

Sec. 36, E12SW14, SW 1/4 SW 1/4, W 1/2 SE 1/4.

T. 18 S., R. 2 E.,

Sec. 1, Lots 3 and 4, N 1/2 SW 1/4 NE 1/4, N 1/2 S 1/2 NW 1/4.

The area described contains 341.23 acres in San Diego County. Currently 100 percent of the mineral interest in these lands is owned by the United States.

Upon publication of this Notice of Realty Action in the Federal Register as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests, or two years from the date of filing of the application, whichever occurs first.

Dated: August 13, 1987.

Nancy J. Alex,  
Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87-19469 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-07-4111-15; W-99681]

**Proposed Reinstatement of Terminated Oil and Gas Lease; Crook County, WY**

Pursuant to the provisions of Pub.L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-99681 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$7 per acre, or fraction thereof, per year and 16- $\frac{2}{3}$  percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-99681 effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-19483 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-82316]

**Proposed Reinstatement of Terminated Oil and Gas Lease; Lincoln County, WY**

August 18, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-82316 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$7 per acre, or fraction thereof, per year and 16 $\frac{2}{3}$  percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate

lease W-82316 effective February 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-19482 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-07-4212-12; A 20346-R]

**Realty Action; Exchange of Public Land; Navajo and Apache Counties; AZ**

The Phoenix District proposes to exchange public land in Navajo and Apache Counties, south of Interstate 40, to the state of Arizona under the federal/state exchange program.

In exchange, BLM will acquire lands in the Arizona Strip district in northern Coconino and Mohave Counties.

Portions of all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

(a) Navajo County

T. 15N., R. 16 E.,

Secs. 20, 22, 24.

T. 15N., R. 17 E.,

Secs. 20, 22, 24.

T. 16N., R. 17 E.,

Sec. 6.

T. 17 N., R. 17 E.,

Sec. 28.

T. 15 N., R. 18 E.,

Secs. 20, 22, 24, 26.

T. 18 N., R. 18 E.,

Secs. 8, 20, 26, 30, 32.

T. 15 N., R. 19 E.,

Secs. 4, 8, 18, 20, 22, 24, 26, 28, 30.

T. 16 N., R. 19 E.,

Secs. 24, 26, 34.

T. 15 N., R. 20 E.,

Secs. 12, 20, 24, 26, 28, 30.

T. 16 N., R. 20 E.,

Secs. 4, 8, 12, 18, 24.

T. 17 N., R. 20 E.,

Secs. 6, 22, 24, 26, 28, 34.

T. 13 N., R. 21 E.,

Secs. 4, 10.

T. 14 N., R. 21 E.,

Secs. 4, 8, 10, 14, 20, 22, 26, 28, 34.

T. 15 N., R. 21 E.,

Secs. 4, 6, 10, 18, 20, 22, 28, 30, 34.

T. 16 N., R. 21 E.,

Secs. 6, 8, 18, 20, 28, 30.

T. 17 N., R. 21 E.,

Secs. 4, 18, 20, 22, 26, 28, 30, 34.

T. 18 N., R. 21 E.,

Secs. 22, 28.

T. 11 N., R. 22 E.,

Secs. 6, 12.

T. 12 N., R. 22 E.,

Sec. 10.

T. 13 N., R. 22 E.,

Secs. 18, 20, 28, 34.

T. 15 N., R. 22 E.,

Secs. 2, 4, 8, 12.

T. 16 N., R. 22 E.,

Secs. 6, 8, 18, 20, 26, 28, 30, 32, 34, 36.

T. 18 N., R. 22 E.,

Secs. 12, 14, 20, 22.

T. 12N., R. 23E.,

Sec. 20.

T. 14 N., R. 23 E.,

Secs. 14.

T. 15 N., R. 23 E.,

Secs. 6, 8.

T. 17 N., R. 23 E.,

Secs. 4, 6, 12.

T. 18 N., R. 23 E.,

Secs. 8, 10, 12, 14, 22, 28, 34.

Containing 61,453.77 acres, more or less.

(b) Apache County

T. 11 N., R. 24 E.,

Sec. 26.

T. 12 N., R. 24 e.,

Secs. 24, 28.

T. 13 N., R. 24 E.,

Sec. 26.

T. 18 N., R. 24 E.,

Secs. 10, 12.

T. 19 N., R. 24 E.,

Secs. 22, 24, 26.

T. 10 N., R. 25 E.,

Sec. 18.

T. 13 N., R. 25 E.,

Secs. 4, 6, 18.

T. 15 N., R. 25 E.,

Sec. 32.

T. 18 N., R. 25 E.,

Secs. 6, 18, 30.

T. 19 N., R. 25 E.,

Secs. 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20,

21, 29.

T. 14 N., R. 26 E.,

Secs. 6, 12, 22, 24.

T. 15 N., R. 26 E.,

Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 30.

T. 16 N., R. 26 E.,

Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30,

34.

T. 14 N., R. 27 E.,

Secs. 4, 6, 8, 10, 18, 20, 22.

T. 15 N., R. 27 E.,

Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28,

30, 34.

T. 16 N., R. 27 E.,

Sec. 20.

T. 17 N., R. 27 E.,

Sec. 6.

T. 18 N., R. 27 E.,

Secs. 22, 24, 26, 28.

T. 13 N., R. 28 E.,

Secs. 10, 12, 14, 24, 30.

T. 14 N., R. 28 E.,

Sec. 4.

T. 15 N., R. 28 E.,

Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 28, 30.

T. 16 N., R. 28 E.,

Secs. 4, 6, 8, 10, 14, 18, 20, 22, 24, 26, 28, 30,

34.

T. 17 N., R. 28 E.,

Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28,

30, 34.

T. 13 N., R. 29 E.,

Secs. 6, 18, 28.

T. 14 N., R. 29 E.,

Secs. 4, 8, 10, 12, 20, 24, 28, 30.

T. 15 N., R. 29 E.,

Secs. 12, 14, 26.

T. 16 N., R. 29 E.,

Secs. 28, 34.  
T. 13 N., R. 30 E.,  
Sec. 6.  
T. 15 N., R. 31 E.,  
Sec. 18.

Containing 77,212.90 acres, more or less.

Realty actions published in the **Federal Register** for exchange of land in these counties are:

A 20346-0 published October 23, 1986 affecting 6,358.11 acres in Navajo County.

A 20346-D published April 16, 1987 affecting 48,459 acres in Apache county.

Excluded from exchange will be lands to transfer to Apache County under Pub. L. 98-408 (published August 20, 1986 in the **Federal Register**) and land in proximity to the Petrified National Park proposed for inclusion in the park.

Final determination on disposal will await completion of an environmental analysis.

Individual exchanges will be completed on an equal value basis as determined by appraisal.

All grazing lessees and other affected parties will be notified of pending exchanges.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the land in (a) and (b) above from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-mentioned land shall terminate upon issuance of a document conveying such land or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

August 14, 1987.

[FR Doc. 87-19479 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-32-M

[U-58178; UT-040-7-4212-13]

# **Realty Action; Exchange of the Surface Estate of Public and Private Land; Washington County, UT**

**AGENCY:** Department of the Interior, Bureau of Land Management.

**ACTION:** The surface estate of the following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716): NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 25, and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 24, T. 38 S., R. 10 W., SLM, containing 280 acres more or less.

In exchange for the surface estate of these lands, the United States will acquire the surface estate of the following described lands from the Jones Land and Livestock Company, a Utah Corporation: Beginning at the North Quarter Corner of Section 1, T. 39 S., R. 10 W.; thence West 5 rods; thence southwesterly 257 rods, more or less, to a point 18 rods West of the Northeast Corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 1; thence East 18 rods to the Northeast Corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 1; thence south 80 rods; thence East 80 rods to the South Quarter Corner of Section 1; thence North 320 rods to the point of beginning, containing 117 acres more or less. Also: E $\frac{1}{2}$ SE $\frac{1}{4}$ , Sec. 11, T. 39 S., R. 10 W., SLM, containing 80 acres more or less. Also: NE $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 12, T. 39 S., R. 10 W., SLM. Also: Beginning at the Northeast Corner of the Northwest Quarter of the Northwest Quarter of Section 12, T. 39 S., R. 10 W., SLM, and running thence South 80 rods; thence West 80 rods, thence northeasterly 92 rods, more or less, to a point 40 rods East of the Northwest Corner of Section 12; thence East 40 rods to the point of beginning, containing 70 acres more or less. Also: Beginning at the Northeast corner of NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 14, T. 39 S., R. 10 W.; thence running South 80 rods; thence West 80 rods; thence northeasterly to a point 40 rods West of the point of beginning, thence East 40 rods to the point of beginning, containing 30 acres more or less.

The purpose of this exchange is to acquire administrative control of strategic surface resource values in the Deep Creek drainage. The need for this action derives from increasing use of the Deep Creek area by members of the public and the Bureau's desire to avoid conflicts between such use and adjoining private land owners. The public interest will be served by completing the exchange. The public lands described are hereby segregated from the operation of the Federal mining laws pending disposition of this action.

**ADDRESS:** Detailed information concerning this exchange is available at the following address: Bureau of Land Management, Beaver River Resource Area Office, 444 South Main, Suite C-3,

Cedar City, Utah 84720, Telephone: (801) 586-2458.

Comments should be sent to the same address.

**SUPPLEMENTARY INFORMATION:** The terms and conditions applicable to the exchange are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 U.S.C. 945).

2. The exchange will be of the surface estate only with all mineral rights being retained by the United States.

3. Title transfer will be subject to valid existing rights.

**DATES:** Interested parties may submit comments for a period of 45 days from the date of publication in the **Federal Register**. Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: August 14, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87-19405 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-060-07-4212-14]

# **Realty Action; Land Sale Appraisal Update for Lands in Wyoming**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Land Sale Appraisal Update for Lands in Platte, Goshen, Crook, and Weston Counties, Wyoming, and Blaine, Brown, Cherry, Holt, and Sheridan Counties, Nebraska.

**SUMMARY:** The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable laws.

These parcels are continuing to be reoffered for sale under competitive procedures as per **Federal Register** notices which appeared as follows:

## Wyoming

Platte County: 51 FR 27090 and 27091

(July 29, 1986)

Goshen County: 51 FR 27090 and 27091

(July 29, 1986)

Crook County: 49 FR 43803 and 43804

(October 31, 1984); 49 FR 11583 and

11584 (March 22, 1985)

Weston County: 50 FR 11583 (March 22, 1985)

## Nebraska

Blaine County: 49 FR 2541-2546 incl.

(January 20, 1984); 49 FR 4043

(February 1, 1984); 49 FR 7156

(February 27, 1984); 51 FR 35307 and

35308 (October 2, 1986)

Brown County: 49 FR 2538-2550 incl.

(January 20, 1984); 49 FR 4043

(February 1, 1984); 49 FR 14447 and

14448 (April 11, 1984)

Cherry County: 49 FR 42799-42802 incl.

(October 24, 1984); 49 FR 44814

(November 9, 1984)

Holt County: 49 FR 2543, 2544, 2547, and

2548 (January 20, 1984); 49 FR 4043

(February 1, 1984); 49 FR 14448 and

14449 (April 11, 1984)

Sheridan County: 50 FR 36497 and 36498

(September 6, 1985)

The planning document, environmental assessment/land report, and memoranda and letters of Federal, state, and local contacts concerning the sale are available for review for Platte

and Goshen counties at the BLM, Platte River Resource Area Office, and for Crook and Weston and the counties in Nebraska at the BLM, Newcastle Resource Area Office. All bids and requests for information for Platte and Goshen counties should be sent to BLM, Platte River Resource Area Office, P.O. Box 2420, Mills, WY 82644, street address at 815 Connie, Mills, WY (phone: (307) 261-5008), and for Crook and Weston, and the counties in Nebraska should be sent to BLM, Newcastle Resource Area Office, 1501 Highway 16 Bypass, Newcastle, WY 82701 (phone: (307) 746-4453).

## Wyoming Land Sale List

Serial No.	Legal description	Acreage	Appraised value
Platte County: W-88721	T. 23 N., R. 65 W., 6th P.M., Sec. 8, NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	\$2,600.00
Goshen County: W-88724	T. 23 N., R. 64 W., 6th P.M., Sec. 29, SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	9,200.00
W-88725	T. 23 N., R. 64 W., 6th P.M., Sec. 30, Lot 2	40.91	1,300.00
W-88726	T. 23 N., R. 64 W., 6th P.M., Sec. 31, SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,300.00
W-88730	T. 23 N., R. 65 W., 6th P.M., Sec. 27, NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,950.00
W-88731	T. 22 N., R. 61 W., 6th P.M., Sec. 7, SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	3,250.00
Crook County: W-86202	T. 54 N., R. 62 W., 6th P.M., Sec. 28, SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2,000.00
W-86211	T. 55 N., R. 64 W., 6th P.M., Sec. 6, Lot 16	42.49	4,000.00
Weston County: W-88630	T. 47 N., R. 61 W., 6th P.M., Sec. 26, SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	2,400.00

## Nebraska Land Sale List

Serial No.	Legal description	Acreage	Appraised value
Blaine County: W-86114	T. 22 N., R. 21 W., 6th P.M., Sec. 2, Lot 3	40.10	\$1,600.00
W-86115	T. 21 N., R. 22 W., 6th P.M., Sec. 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,200.00
W-86116	T. 23 N., R. 22 W., 6th P.M., Sec. 19, S $\frac{1}{2}$ SE $\frac{1}{4}$	80.00	3,600.00
W-86117	T. 23 N., R. 22 W., 6th P.M., Sec. 30, Lot 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$	76.40	2,700.00
W-86118	T. 23 N., R. 22 W., 6th P.M., Sec. 34, SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	1,800.00
W-86119	T. 24 N., R. 22 W., 6th P.M., Sec. 26, SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,600.00
W-86120	T. 24 N., R. 22 W., 6th P.M., Sec. 29, NW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1,400.00
W-86121	T. 21 N., R. 23 W., 6th P.M., Sec. 6, Lot 5, SE $\frac{1}{4}$ NW $\frac{1}{4}$	78.57	3,900.00
W-86122	T. 23 N., R. 23 W., 6th P.M., Sec. 23, S $\frac{1}{2}$ SW $\frac{1}{4}$	80.00	2,800.00
W-86124	T. 24 N., R. 23 W., 6th P.M., Sec. 27, SE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	1,200.00
Brown County: W-86129	T. 25 N., R. 21 W., 6th P.M., Sec. 1, S $\frac{1}{2}$ SE $\frac{1}{4}$ ; Sec. 3, S $\frac{1}{2}$ SE $\frac{1}{4}$	160.00	5,600.00
W-86130	T. 25 N., R. 21 W., 6th P.M., Sec. 9, W $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	2,400.00
W-86131	T. 27 N., R. 21 W., 6th P.M., Sec. 22, NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,400.00
W-86133	T. 25 N., R. 22 W., 6th P.M., Sec. 1, SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	2,000.00
W-86134	T. 25 N., R. 22 W., 6th P.M., Sec. 30, NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1,800.00
W-86135	T. 26 N., R. 22 W., 6th P.M., Sec. 5, NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,400.00
W-86136	T. 25 N., R. 23 W., 6th P.M., Sec. 21, E $\frac{1}{2}$ SE $\frac{1}{4}$ ; Sec. 22, S $\frac{1}{2}$ SW $\frac{1}{4}$	160.00	5,600.00
W-86138	T. 31 N., R. 24 W., 6th P.M., Sec. 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,800.00
W-86139	T. 31 N., R. 24 W., 6th P.M., Sec. 14, SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1,400.00
Cherry County: W-86162-A	T. 33 N., R. 29 W., 6th P.M., Sec. 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1,600.00
W-86163	T. 25 N., R. 30 W., 6th P.M., Sec. 11, N $\frac{1}{2}$ NE $\frac{1}{4}$ ; Sec. 12, W $\frac{1}{2}$ NW $\frac{1}{4}$	160.00	5,600.00
W-86167	T. 29 N., R. 34 W., 6th P.M., Sec. 22, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$	80.00	2,400.00
W-86169	T. 33 N., R. 37 W., 6th P.M., Sec. 13, SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	1,400.00
W-86171	T. 26 N., R. 28 W., 6th P.M., Sec. 6, Lot 7	39.24	1,550.00
Holt County: W-86107	T. 28 N., R. 14 W., 6th P.M., Sec. 24, SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,600.00
W-86108	T. 33 N., R. 14 W., 6th P.M., Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	1,800.00
W-86109	T. 28 N., R. 16 W., 6th P.M., Sec. 19, Lot 3	22.50	900.00
Sheridan County: W-86236	T. 28 N., R. 44 W., 6th P.M., Sec. 11, NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1,400.00
W-86237	T. 35 N., R. 44 W., 6th P.M., Sec. 24, SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1,800.00
W-86238	T. 33 N., R. 45 W., 6th P.M., Sec. 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	5,400.00

Date: August 18, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87-19467 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-22-M

### Minerals Management Service

#### Development Operations Coordination Document; Exxon Co. U.S.A.

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1082, Block 72, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

**DATE:** The subject DOCD was deemed submitted on August 17, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1987.

J. Rogers Percy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-19406 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-MR-M

#### Development Operations Coordination Document; Texaco USA

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3147, Block, 26, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisiana and Morgan City, Louisiana.

**DATE:** The subject DOCD was deemed submitted On August 17, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 746-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1987.

J. Rogers Percy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-19407 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-MR-M

### National Park Service

#### Intention to Negotiate Concession Contract; Shields and Dean Concessions, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Shields and Dean Concessions, Inc., authorizing it to continue to provide tennis, golf and other recreational facilities and services for the public at Gateway National Recreation Area for a period of ten (10) years from January 1, 1988, through December 31, 1997.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Gateway National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and the negotiation of a new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Date: July 29, 1987.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 87-19471 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-70-M

**National Register of Historic Places;  
Notification of Pending Nominations;  
Alabama, et al.**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 15, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 9, 1987.

Carol D. Shull,

Chief of Registration National Register

**ALABAMA**

**Bibb County**

Centreville, *Davidson-Smitherman House*, 167 Third Ave., S.

**ALASKA**

**Nome District**

**Fairhaven Ditch**

**COLORADO**

**Boulder County**

Lyons, Vicinity, *Longmont Power Plant*, Old Apple Valley Rd.

**Denver County**

Denver, *Temple Emanuel*, 1595 Pearl St.

**El Paso County**

Colorado Springs, *Boulder Crescent Place Historic District*, 9 & 11 W. Boulder St., 312, 318, & 320 N. Cascade

**FLORIDA**

**Volusia County**

New Smyrna Beach, *El Real Retiro*, 636 N. Riverside Dr. & 647 Faulkner St.

**IDAHO**

**Benewah County**

St. Maries, *Benewah County Courthouse* (County Courthouses In Idaho MPS), College Ave. & Seventh St.

**Boundary County**

Bonnors Ferry, *Boundary County Courthouse* (County Courthouses In Idaho MPS), Kootenai St.

**Caribou County**

Soda Springs, *Caribou County Courthouse* (County Courthouses In Idaho MPS), 159 S. Main

**Cassia County**

Burley, *Cassia County Courthouse* (County Courthouses In Idaho MPS), Fifteenth St. & Overland Ave.

**Elmore County**

Mountain Home, *Elmore County Courthouse* (County Courthouses In Idaho MPS), 150 S. Fourth E.

**Franklin County**

Preston, *Franklin County Courthouse* (County Courthouses In Idaho MPS), 39 E. Oneida

**Idaho County**

Elk City vicinity, *Meinert Ranch Cabin*, 1.8 mi. SW of Red River Hot Springs on Red River-Beargrass Rd. No. 234

**Jefferson County**

Rigby, *Jefferson County Courthouse* (County Courthouses In Idaho MPS), 134 N. Clark

**Kootenai County**

Hayden Lake, *Finch, John A., Cartaker's House*, 2160 Finch Rd.

**Madison County**

Rexburg, *Madison County Courthouse* (County Courthouses In Idaho MPS), E. Main St.

**Oneida County**

Malad, *Oneida County Courthouse* (County Courthouses In Idaho MPS), Court St.

**Teton County**

Driggs, *Teton County Courthouse* (County Courthouses In Idaho MPS), Main St.

**LOUISIANA**

**Caddo Parish**

Shreveport, *Thrasher House*, 8515 Youree Dr. Pioneer Heritage Center, LA State University

**MARYLAND**

**Anne Arundel County**

Bristol vicinity, *Owens, James, Farm*, 5682 Greenock Rd.

**Baltimore County**

Catonsville, *Old Catonsville High School*, 20 Winters Lane

**Carroll County**

Union Mills vicinity, *Arter, Solomon, House*, 4029 Geeting Rd.

**Frederick County**

Frederick, *Linden Grove*, Solarex Court

**Harford County**

Darlington, *Darlington Historic District*, Main St., Shuresville Rd., Quaker Lane, Richmond Ave., & Trappe Church Rd.

**Prince George's County**

Aquasco, *St. Mary's Rectory*, 16305 St. Mary's Church Rd.

Upper Marlboro vicinity, *Woodstock*, 87SE Crain Hwy.

**Washington County**

Hagerstown, *Oak Hill Historic District*, Roughly bounded by W. Irvin, Potomac & Prospect Aves., & Forest Dr.

**MICHIGAN**

**Eaton County**

Grand Ledge, *River Ledge Historic District*, Jefferson, Scott, & Lincoln Sts. between Franklin & Maple Sts.

**MISSISSIPPI**

**Alcorn County**

Corinth vicinity, *Union Battery F, Battle of Corinth*, Rabbit Ranch Rd.

**MISSOURI**

**Atchison County**

Rock Port, *Atchison County Memorial Building*, 417 S. Main St.

**Cape Girardeau County**

Cape Girardeau, *Hanover Lutheran Church*, 2949 Perryville Rd.

**Clay County**

Liberty, *Odd Fellows Home District*, Rt. 6, Box 194; MO 291

**NEW JERSEY**

**Camden County**

Collingswood, *Collings-Knight Homestead*, 500 Collings Ave.

Collingswood, *Stokes-Lee House*, 615-617 Lees Ave.

West Collingswood, *Thackara House*, 912 Eldridge Ave.

**Cumberland County**

Mauricetown, *Hoskins, Caesar, Log Cabin*, Jct. of South & Second Sts.

**NEW MEXICO**

**Catron County**

Mogollon, *Mogollon Historic District*, NM 78 (Bursum Rd.)

Mogollon vicinity, *Socorro Mines Mining Company Mill*, Fanny Hill, Fannie Hill & W to Fannie Hill Mill

**NORTH CAROLINA**

**Rowan County**

Woodleaf, *Mingus, Joseph H., Farm*, S side SR 1947, NE of jct. with SR 1702

**OHIO**

**Cuyahoga County**

Beachwood, *Blossom, Elizabeth B., Subdivision Historic Division*, Jct. of Richmond & Cedar Rds.

**Fairfield County**

Lancaster, *Lancaster Methodist Episcopal Camp Ground Historic District*, Roughly bounded by Hocking River, W. Fair Ave., & Ety Rd.

**Montgomery County**

Oakwood, *Long-Romspert House*, 1947 Far Hills Ave.

**OREGON**

**Benton County**

Corvallis, *Corvallis Hotel*, 201-211 SW Second St.

**Clackamas County**

Oregon, *Ermatinger, Francis, House*, 619 Sixth St.  
Portland, *Bell Station Store*, 9300 SE Bell Ave.

**Crook County**

Prineville, *Baldwin, Thomas M., House*, 126 W. First St.

**Douglas County**

Riddle, *Brown, Will Q., House and Wash House*, 274 S. Main St.  
Winston, *Winston, William C. and Agnes, House*, Winston Section Rd.

**Jackson County**

Ashland, *Ashland Municipal Powerhouse*, Ashland Creek Canyon  
Ashland, *Ashland Oregon National Guard Armory*, 208 Oak St.  
Medford, *Reddy, Dr. John F. and Mary, House*, 122 Oregon Terrace

**Klamath County**

Klamath Falls, *Oregon Bank Building*, 905 Main St.

**Lane County**

Eugene, *Chambers, Frank L. and Ida H., House*, 1006 Taylor St.

**Multnomah County**

Gresham, *Louis Home Hospital and Residence Hall*, 722 NE One Hundred & Sixty-second Ave.  
Portland, *Jeppesen, Peter, House*, 4107 N. Albina Ave.

**Polk County**

Monmouth, *Howell, John W., House*, 212 N. Knox St.

**PENNSYLVANIA****Erie County**

Erie, *SS NIAGARA (Freighter) (Proposed Moved)*, Eric Sand & Gravel Co., Foot of Sassafras St.

**VIRGINIA****Rockbridge County**

Natural Bridge vicinity, *Virginia Manor*, VA 130

**Tazewell County**

Bull Thistle Cave Archaeological Site (44TZ92)

**Winchester (Independent City)**

Hexagon House, 530 Amherst St.

**WASHINGTON****King County**

Lester, *Lester Depot*, US Forest Service Rd. 212, Green River Watershed  
Seattle, *US Immigration Building*, 84 Union St.

**Pierce County**

DuPont, *DuPont Village Historic District*, Roughly bounded by Santa Cruz, Brandywine, DuPont, & Penniman

**WISCONSIN****Forest County**

Butternut Lake Site (47-Fr-122)

**WYOMING****Park County**

Meeteetse, *Anderson Lodge*, Greybull Ranger District, Shoshone National Forest

[FR Doc. 87-19136 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-70-M

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY****Agency for International Development****Public Information Collection Requirements Submitted to OMB for Review**

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, IRM/PE, Room 1109, SA-14, Washington, DC 20523.

Date Submitted: August 13, 1987

Submitting Agency: Agency for

International Development

OMB Number: None

Form Number: None

Type of Submission: New

Title: Student Medical Coverage

Purpose: Under the Participant Training Program, A.I.D. funds the training of foreign nationals in the United States as a major part of the foreign economic assistance program. To provide for necessary medical and dental expenses, the Agency maintains the Health and Accident Coverage (HAC) Program. Summary information is required on mandatory medical insurance and student health service facilities at universities which are imposed on enrolled A.I.D. participants, resulting in double coverage with A.I.D.'s Health & Accident Coverage Program. This information will be used by A.I.D.'s contractor in claims processing.

Respondents will have a submission burden of one biennial response.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: August 13, 1987.

Fred D. Allen,

Planning and Evaluation Division,

[FR Doc. 87-19404 Filed 8-24-87; 8:45 am]

BILLING CODE 6116-01-M

**INTERSTATE COMMERCE COMMISSION**

[Docket No. AB-55 (Sub-No. 199)]

**CSX Transportation, Inc.; Abandonment in Marlboro County, SC; Findings**

The Commission has found that the present and future public convenience and necessity permit CSX Transportation, Inc. to abandon its 18.86 mile rail line between McColl (milepost AG-259.40) and Marlboro, SC (milepost AG-276.19), including the Breeden spur between milepost AGA-269.23 and milepost AGA-272.38. The abandonment certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelop containing the offer: Rail Section, AB-OFA. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19474 Filed 8-24-87; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration**

[Docket No. 86-42]

**Fourth Street Pharmacy; Revocation of Registration**

On April 26, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Fourth Street Pharmacy, Derald R. Hughes (Respondent) of 600 4th Street North East, Watertown, South Dakota 57201 seeking to revoke its DEA Certificate of Registration AH4074162, and deny the pending application for renewal of that registration dated September 26, 1985. The statutory basis for the Order to

Show Cause was the conviction of Fourth Street Pharmacy, Inc. in the Circuit Court, Third Judicial Circuit, State of South Dakota, on June 27, 1985, of dispensing a Schedule IV controlled substance without a prescription, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing by letter dated May 22, 1986. The hearing in this matter was held on January 14, 1987, in Minneapolis, Minnesota, before Administrative Law Judge Francis L. Young. On April 30, 1987, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Exceptions were filed by Respondent's counsel on June 15, 1987. Respondent also filed a request for appearance before the Administrator on that date. Government counsel filed a response to Respondent's exceptions on June 25, 1987. Judge Young transmitted the record to the Administrator on June 29, 1987. On July 16, 1987, the Administrator denied Respondent's request to appear before him. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in November 1982, a South Dakota investigator conducted a routine inspection of Respondent pharmacy. The investigator found numerous Schedule III and IV prescriptions in the files showing refills without the physician's indication of approval for refill, and refills in excess of the physician's authorization. The investigator brought these violations to the attention of Derald Hughes, a pharmacist and owner, and explained the applicable regulations. The investigator returned to the pharmacy on October 16, 1984, and again noted that the controlled substance prescriptions were being unlawfully refilled.

An investigation of the pharmacy was initiated, and in April 1985, investigators went to the pharmacy with a subpoena for prescriptions. The investigation revealed that prescriptions which indicated that they were issued by a specific physician were not, in fact, issued by the physicians whose names appeared on them. These were prescriptions for Schedule III and IV controlled substances allegedly telephoned or orally authorized by the physician. The refills noted on these prescriptions showed repeated violations of the requirement that a

prescription for a Schedule III or IV controlled substance may not be refilled more than five times within a six-month period.

Three prescriptions were found in the files for one individual bearing the dates July 30, 1983, June 14, 1984, and December 3, 1984. All the prescriptions were written for Darvocet N 100, a Schedule IV controlled substance. The July 20, 1983, prescription listed 22 refills over a ten-month period. The physician whose name was on the prescription told the investigator he had seen the patient on July 15, 1983, and authorized a prescription for Darvocet N 100. This prescription was located at another local pharmacy. The doctor did not have a record of authorizing a prescription for the patient on July 20, 1983. On the reverse side of the prescription where refills are listed, were notations such as "Ok called Dr.," and "OK Dr." When this prescription was first observed by the investigator on October 16, 1984, the notations were not on the prescription. They were on the prescription when it was subpoenaed in April 1985. The reverse side of the June 14, 1984, prescription for Darvocet N 100 indicated that it has been refilled ten times in 34 days. The December 3, 1984, prescription indicated seven refills over a two-month period.

The Administrative Law Judge noted that the Respondent pharmacy presented an affidavit from the physician whose name was on the previously mentioned prescriptions. In the affidavit, the doctor does not say that he authorized all the refills in question, he merely indicates that he doesn't always record refills and there may have been some he didn't note in the patient's medical chart. The specific prescriptions the doctor mentions in the affidavit were not the ones at issue. The Administrative Law Judge gave no weight to this affidavit and chose instead to consider the statements the doctor made to investigators closer in time to the incidents in question.

The Administrative Law Judge also found that the pharmacy billed the state medicaid program for one drug and actually dispensed another. He also found that Derald Hughes prepared three prescriptions for a patient who had died two weeks before. The physician named on these prescriptions said he never authorized them, and in fact was present when the patient died. Mr. Hughes then caused the state medicaid program to be billed for the prescriptions. They were found by another pharmacist in a crumpled-up condition. Mr. Hughes indicated it was a

clerical error and attempted to return the money to the state after investigation had begun. The Administrative Law Judge found that Mr. Hughes knowingly prepared three false prescriptions and billed the state medicaid program.

Fourth Street Pharmacy, a South Dakota Corporation, was convicted after a plea of guilty to one count of dispensing a Schedule IV controlled substance without prescription. This is a felony relating to controlled substances. Mr. Hughes is the principal pharmacist and co-owner, with his wife, of all shares of corporate stock. Respondent argued at the hearing and in post hearing filings, that it was his understanding that the plea agreement that resulted in the guilty plea and conviction, was the final resolution of the matter and that the pharmacy would be permitted to continue in business. The Assistant Attorney General of South Dakota, who filed an affidavit in this matter, appeared to agree with Respondent. The Administrative Law Judge concluded that DEA cannot forbear taking action because the parties to a plea agreement on a criminal matter failed to consider that the resulting conviction could be grounds for revocation of the pharmacy's registration.

The Administrative Law Judge recommended the revocation of Respondent pharmacy's DEA Certificate of Registration. He also recommended that the effective date be 90 days from publication of the order to allow the pharmacy to be sold. The Administrator adopts the proposed findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator finds that Respondent pharmacy's and Mr. Hughes' continued failure to comply with the law regarding prescriptions for controlled substances; the unprofessional conduct in handling the business of the pharmacy, including billing the State of South Dakota for unauthorized prescriptions for a dead person; and the fraudulent billing to medicaid, shows that the pharmacy and Mr. Hughes are not to be trusted with a DEA Registration.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator hereby orders that Respondent's DEA Certificate of Registration AH4074162, be, and it hereby is, revoked effective November 23, 1987. Any outstanding applications for registration are denied.

Dated: August 19, 1987.

John C. Lawn,  
Administrator.

[FR Doc. 87-19394 Filed 8-24-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-82]

# **Revocation of Registration; Harlem Drug Co., DBA Harlem Cut Rate Drugs**

On October 16, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harlem Drug Company, dba Harlem Cut Rate Drugs (Respondent), 309 South Jackson, Albany, Georgia 31701, proposing to revoke its DEA Certificate of Registration AH3193935 as a retail pharmacy. The statutory predicate for the Order to Show Cause was the conviction of owner and pharmacist Kenneth Miller, on June 27, 1986, in the United States District Court for the Middle District of Georgia, of illegal possession and distribution of controlled substances, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing by letter dated November 14, 1986. Counsel indicated he had no authority to represent Mr. Miller and that Mr. Miller should be contacted at his place of incarceration. A copy of the Order to Show Cause was forwarded to Mr. Miller at the Federal Correctional Institution, Tallahassee, Florida. Mr. Miller responded by letter dated December 12, 1986, requesting that a hearing be postponed until he was paroled.

At this time it was learned that Respondent pharmacy was no longer in business and that its Georgia pharmacy license had been suspended. Counsel for the agency filed a motion for summary disposition on February 6, 1987, and Mr. Miller, on behalf of Respondent pharmacy, replied by letter dated March 3, 1987. On June 11, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended decision.

The Administrative Law Judge found that on August 9, 1985, the Georgia State Board of Pharmacy ordered the suspension of the pharmacy license of Respondent pharmacy. By letter dated February 3, 1987, the Georgia Board of Pharmacy indicated that the suspension remained in effect and that Harlem Drug

Co. was not authorized to handle controlled substances or operate in any manner. Respondent did not contradict or contest this conclusion in its reply to the agency's motion for summary disposition.

The Administrative Law Judge concluded that DEA does not have the authority to maintain the registration of a pharmacy unless the pharmacy is authorized by the state to dispense controlled substances. The Administrator of DEA has consistently maintained this position. *Tony's Discount Drug Store*, Docket No. 85-60, 51 FR 70 (1986); *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 85-20, 49 FR 33194 (1984). Since Respondent pharmacy does not have state authorization, it cannot continue to be registered with DEA.

The Administrative Law Judge further concluded that in a case such as this, a motion for summary disposition is properly entertained and must be granted. It is settled that when no fact question is involved, or when the facts are agreed, a plenary adversary administrative proceeding is not required even though the statute may require a hearing. In such situations it can be concluded that Congress did not intend administrative agencies to perform meaningless tasks. *U.S. v. Consolidated Mines and Smelting Co. Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971). The Administrative Law Judge recommended that the Administrator revoke the DEA registration of Respondent pharmacy.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the revocation of Respondent pharmacy's DEA Registration and that it must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH3193935 be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective September 24, 1987.

Dated: August 19, 1987.

John C. Lawn,  
Administrator.

[FR Doc. 87-19433 Filed 8-24-87; 8:45 am]

BILLING CODE 4410-09-M

## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

#### **Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; AT&T Technologies, Inc., et al.**

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 801 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

## APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Technologies, Inc. (IBEW)	Oklahoma City, OK	8/17/87	8/11/87	20,002	Computers.
C.P.T. Corporation (Workers)	Chanhassen, MN	8/17/87	8/6/87	20,003	Equipment.
Dee Jay (ILGWU)	Paterson, NJ	8/17/87	8/4/87	20,004	Coats.
Double E. Well Service (Workers)	St. Louis, OK	8/17/87	8/7/87	20,005	Oil.
Drelco Co. Incorp. (Workers)	Iraan, TX	8/17/87	8/5/87	20,006	Oil.
Erie Casting Co. (USWA)	Erie, PA	8/17/87	7/24/87	20,007	Iron.
General Electric Co. (IUE)	Lynn, MA	8/17/87	7/28/87	20,008	Engines.
General Automotive Specialty Co. (Company)	N. Brunswick, NJ	8/17/87	8/5/87	20,009	Auto. Parts.
General Automotive Specialty Co. (Company)	Carlstadt, NJ	8/17/87	8/5/87	20,010	Auto. Parts.
Goodyear Tire & Rubber Co. (URW)	Akron, OH	8/17/87	8/5/87	20,011	Tires.
Hydro-Test, Inc. (Workers)	Longbeach, CA	8/17/87	8/6/87	20,012	Oil & Gas.
Integrated Electronics (Workers)	Wharton, NJ	8/17/87	7/27/87	20,013	Auto. Parts.
J.B. Coggins Co., Inc. (Company)	Meriden, CT	8/17/87	8/4/87	20,014	Castings.
J.D. Phillips Corp. (Company)	Alpena, MI	8/17/87	8/4/87	20,015	Machinery.
Lordstown Rubber (IBICWHA)	Warren, OH	8/17/87	8/10/87	20,016	Rubber.
Mesabi Tire (Workers)	Virginia, MN	8/17/87	7/21/87	20,017	Steel.
Moseley Petroleum (Company)	Dallas, TX	8/17/87	8/6/87	20,018	Oil & Gas.
National Stanford, Co. (Workers)	St. Niles, MI	8/17/87	8/7/87	20,019	Wire.
Placid Oil Co. (Workers)	Denver, CO	8/17/87	8/4/87	20,020	Crude Oil.
Placid Oil Co. (Workers)	Dallas, TX	8/17/87	8/4/87	20,021	Crude Oil.
RSI Fabtec (NCE)	Zeeland, MI	8/17/87	8/7/87	20,022	Computers.
Story Mfg. Co. (Workers)	Ennis, TX	8/17/87	7/15/87	20,023	Dresses.
San Antonio Data Processing, Inc. (Company)	San Antonio, TX	8/17/87	8/3/87	20,024	Processors.
Vandril, Inc. (Company)	Edmond, OK	8/17/87	8/7/87	20,025	Oil & Gas.

[FR Doc. 87-19449 Filed 8-24-87; 8:45 am]  
BILLING CODE 4510-30-M

#### Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Canadian Chains, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 3, 1987-August 7, 1987 and August 10, 1987-August 14, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,844; Canadian Chains, Inc., Skowhegan, ME

TA-W-19,755; The Jade Corp., Huntington Valley, PA

TA-W-19,778; Cincinnati Mirror Corp., Cincinnati, OH

TA-W-19,857; MWJ Producing Co., Midland, TX

TA-W-19,807; Forest Oil Corp., Corporate Headquarters, Denver, CO, Rocky Mountain Div., Denver, CO, Louisiana Div., Lafayette, LA

TA-W-19,843; C & F Glenn Gas, Wilburton, OK

TA-W-19,784; Litton Industrial Automation System, South Beloit, IL

TA-W-19,806; Edison Battery Products, Belleville, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,706; Hoke, Inc., Cresskill, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,786; Michigan Milk Producers Association, Sebewaing, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,793; Sheffield Industries, Inc., Miami, FL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certifications.

TA-W-19,764; Inexco Oil Co., Houston, TX

U.S. imports of dry natural gas declined absolutely and relative to

domestic shipment in 1986 compared with 1985.

TA-W-19,865; Technicolor, North Hollywood, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,908; United Pipe and Supply, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,845; Chemical Express, Mary Neal, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,868; United Engineers and Constructors, Stearns-Rogers Div., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,854; Houston Engineers, Inc., Houston, TX

U.S. imports of oil field machinery are negligible.

TA-W-19,804; Klockner Ferromatik Desma, Inc., D/B/A/ Desma, Sudburg, MA

U.S. imports of shoe machinery and parts decreased in the January through March 1987 period compared to the same period in 1986.

TA-W-19,762; Geometric Tool, New Haven, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,821; *Unisys, Eau Claire, WI*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,964; *Safeway Stores, Inc., Safeway Store 453, Snyder, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,973; *Big Chief Drilling Co., Oklahoma City, OK*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,783; *LTV Steel Co., Albert Street Office, Youngstown, OH*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,831; *Alcan Aluminum Corp., Metal Goods Div., Edison, NJ*

U.S. imports of stainless hot and cold rolled sheet decreased absolutely and relative to domestic shipment in the January through March 1987 period compared to the same period in 1986.

TA-W-19,836; *American Penn Energy, Inc., Fairfield, TX*

U.S. imports of natural gas declined absolutely and relative to domestic shipment in 1986 compared to 1985.

TA-W-19,837; *American Penn Energy, Inc., Padres Island, TX*

U.S. imports of natural gas declined absolutely and relative to domestic shipments in 1986 compared to 1985.

TA-W-19,810; *Intex Plastics Corp., Corinth, MS*

The investigation revealed that criterion (1) and (2) have not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,814; *Magnetic Peripherals, Inc., Thin Film Head Department, Edina, MN*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,825; *Caterpillar, Inc., Bettendorf, IA*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,805; *EIS Brake Parts, Berlin, CT*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,887; *RPI Texas, Inc., Austin, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-19,834; *Randall Co., South Haven, MI*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,824; *Caterpillar, Inc., Davenport, IA*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,818; *Quality Electric Steel Castings, Inc., Houston, TX*

U.S. imports of steel castings declined absolutely and relative to U.S. shipments in 1986 compared to 1985.

TA-W-19,826; *Cooper Industries, Inc., Lighting Products Div., Racine, WI*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,899; *North Pacific Plywood, Inc., Graham Plant, Spanaway, WA, Dock Street Reload, Tacoma, WA*

U.S. imports of softwood plywood are negligible.

TA-W-19,862; *Vickers, Inc., Tulsa, OK*

U.S. imports of oil field equipment were negligible.

TA-W-19,791; *RCA Cathode Ray Tube Mfg., Operation, Lancaster, PA*

Increased imports did not contribute importantly to workers separations at the firm.

#### Affirmative Determinations

TA-W-19,864; *Tamaqua Frocks, Tamaqua, PA*

A certification was issued covering all workers of the firm separated on or after June 18, 1986.

TA-W-19,812; *Levelor South Venetian Blinds, Hialeah, FL*

A certification was issued covering all workers of the firm separated on or after May 28, 1986 and before March 31, 1987.

TA-W-19,850; *Fairbanks Morse Pump Corp., Kansas City, KS*

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA-W-19,816; *Memphis Dinettes, Inc., Memphis, TN*

A certification was issued covering all workers of the firm separated on or after June 5, 1986.

TA-W-19,772; *Union Carbide Corp., Carbide Products Div., Republic and National Plants, Niagara Falls, NY*

A certification was issued covering all workers of the firm separated on or after May 14, 1986.

TA-W-19,856; *Link Corp., Troy, OH*

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA-W-19,767; *Neenah Foundry Co., Neenah, WI*

A certification was issued covering all workers of the firm separated on or after May 20, 1986.

TA-W-19,775; *Burkhart Petroleum Corp., Tulsa, OK*

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA-W-19,879; *Kennedy Van Saun Corp., Danville, PA*

A certification was issued covering all workers of the firm separated on or after July 2, 1986.

TA-W-19,829; *International Components Corp., (INTO), Lakewood, NJ*

A certification was issued covering all workers of the firm separated on or after June 10, 1986.

TA-W-19,803; *Chieftain International, Inc., Denver Exploration Office, Denver, CO*

A certification was issued covering all workers of the firm separated on or after May 29, 1986.

TA-W-19,779; *First Energy Corp., Houston, TX*

A certification was issued covering all workers of the firm separated on or after May 28, 1986.

TA-W-19,715; *Regal Fashions Co., Paterson, NJ*

A certification was issued covering all workers of the firm separated on or after April 22, 1986.

TA-W-19,799; *Willman Thermal System Corp., Shelbyville, IN*

A certification was issued covering all workers of the firm separated on or after June 1, 1986.

TA-W-19,765; *Koehring Cranes & Excavators, Waverly, IA*

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA-W-19,820; *Thomas Nelson, Inc., Camden, NJ*

A certification was issued covering all workers of the firm separated on or after May 29, 1986.

**TA-W-19,798; The United States  
Playing Cards Co., Norwood, OH**

A certification was issued covering all workers of the firm separated on or after May 20, 1986 and before November 30, 1986.

I hereby certify that the aforementioned determinations were issued during the period August 3-7, 1987 and August 10-14, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

**Marvin M. Fooks,**  
*Director, Office of Trade Adjustment  
Assistance.*

Dated: July 28, 1987.

[FR Doc. 87-19452 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,618]

**Negative Determination Regarding  
Application for Reconsideration;  
Champion International Corp.**

By an application dated July 15, 1987, counsel for the workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for former workers of Champion International Corporation's Silver City sawmill at Helena, Montana. The denial notice as signed on July 1, 1987 and published in the *Federal Register* on July 14, 1987 (52 FR 26376).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Champion's Silver City sawmill produced softwood lumber. The sawmill closed in December, 1986. The Department's negative determination is based on investigation findings which show that the increased import criterion of section 222 of the Trade Act was not met. U.S. imports of softwood lumber declined absolutely and relative to domestic production in 1986 compared with 1985, and declined relative to

domestic production in the first quarter of 1987 compared with the first quarter of 1986. Further, the Department's survey of company customers revealed that those customers accounting for the predominant portion of the decline in sales at the Silver City facility did not increase purchases of imported softwood lumber in 1986 compared with 1985.

Investigation findings also show that the Silver City sawmill closed because of a lack of raw material in the area and for other non-trade reasons. Official Federal government data show that U.S. imports of softwood lumber from Canada decreased in 1986 compared to 1985.

Counsel states that the Department's determination in the subject case is in error as to facts not considered and as to the interpretation of the facts. To support this position, counsel provided an affidavit from a former worker and newspaper clippings.

The affiant states that the Department's determinations are not consistent with determinations on other petitions from workers of Champion International Corporation. Also, the affiant has concerns about the Department's survey and requests an opportunity to review it. Further, affiant avers that company officials informed him of stiff competition from Canadian lumber and that a public hearing was not afforded him. Lastly, affiant claims that a tariff on Canadian lumber is inconsistent with the Department's negative determination.

In certifying workers for trade adjustment assistance, each petition is judged on its own merits, the products produced and in the time frame for which it was filed. Workers at Champion's Bonner Sawmill in Bonner, Montana (TA-W-16,083) were certified for trade adjustment assistance on November 7, 1985; Workers at Champion's Libby and Bonner logging camps in Libby, and Bonner, Montana (TA-W-17,990-1) were certified for trade adjustment assistance on November 7, 1986 and workers at the subject location (TA-W-19,618) were denied for trade adjustment assistance on July 1, 1987. The investigation on petition TA-W-19,618 for workers at the Silver City sawmill, Helena, Montana was initiated on May 4, 1987 in a different time period when imports of softwood were not increasing.

It was not necessary that the Department survey the customers of softwood from Silver City since the increased import criterion was not met. Nonetheless, a survey was conducted. Investigation findings show that all of

Silver City sales went through the Tacoma sales office and Silver City's portion of sales at the Tacoma sales office were insignificant. Findings further show that there were no company imports in 1986 at the Tacoma sales office. Lastly, the request for an opportunity to review the customer survey cannot be granted since firms are assured that any sensitive commercial and financial data furnished in confidence to the Department will be accepted by the Department in accordance with 29 CFR 90.33 and will not be disclosed except to the extent required by applicable law or court order, unless the company gives its written consent to disclosure.

Concerning the affiant's claim about not being afforded the opportunity for a public hearing, the Department notes that an invitation for a public hearing was extended in the *Federal Register* on May 15, 1987 (52 FR 18464), when the Notice of Investigation was published. A public hearing is not mandatory in order for the Secretary to make a determination.

The remaining points raised by the affiant concerning stiff foreign competition and that a tariff on Canadian lumber is inconsistent with the Department of Labor's determination would not in themselves provide a basis for certification. Preliminary findings by the Department of Commerce under the countervailing duty provisions of the Trade Act would not form a basis for certification. The Department's investigation dealt with the Silver City sawmill. The Group Eligibility Requirements set at section 222 of the Trade Act of 1974 provides certification criteria for individual firms or subdivisions of firms while findings by the Commerce Department under the countervailing duty provisions are not controlling for workers at the Silver City sawmill.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of August 1987.

**Robert O. Deslongchamps,**  
*Director, Office of Legislation and Actuarial  
Services, UIS.*

[FR Doc. 87-19453 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

# **Revised Determination on Reconsideration; De Novo Oil and Gas, Inc.**

[TA-W-19, 757 et al.]

In the matter of TA-W-19, 757 Houston, Texas, TA-W-19, 757A El Campo, Texas, TA-W-19, 757B Richmond, Texas, TA-W-19, 757C Lafayette, Louisiana.

On July 31, 1987, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of De Novo Oil and Gas, Inc., Houston, Texas.

The petitioner's application for reconsideration states that the subject firm produced and marketed crude oil which was directly affected by increased imports of crude oil.

Findings on reconsideration confirmed that De Novo Oil and Gas produced crude oil and sold these products on the spot market and to other domestic oil companies who had increased import purchases of crude oil in 1986 compared to 1985. De Novo Oil and Gas experienced reduced sales, production and employment in 1986 compared to 1985.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1986 compared to 1985. A Department of Labor survey revealed that the major customers of De Novo Oil and Gas increased their purchases of imported crude oil in 1986 compared to 1985 while reducing purchases from De Novo Oil and Gas.

## **Conclusion**

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of crude oil produced at De Novo Oil and Gas, Inc., Houston, Texas contributed importantly to the decline in production and sales and to the total or partial separation of workers at De Novo Oil and Gas, Inc., Houston, Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of De Novo Oil and Gas, Inc., Houston, Texas; El Campo, Texas, Richard, Texas and Lafayette, Louisiana who became totally or partially separated from employment on or after May 11, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of August 1987.

Robert O. Deslongchamps,  
Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-19451 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,559]

# **Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance; Santa Fe Minerals, Inc.**

In the matter of Santa Fe Minerals, Incorporated, Southwest Exploration District, Midland, Texas, and all other locations of the Southwest Exploration District in the following states: Texas TA-W-19,559A, Louisiana TA-W-19,559B, Oklahoma TA-W-19,559C, California TA-W-19,559D.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 20, 1987 applicable to all workers of the Midland, Texas facility of Santa Fe Minerals, Inc. The certification was published in the Federal Register on July 9, 1987 (52 FR 25930). The certification was amended on July 27, 1987 to reflect the correct worker group. The amended certification was published in the Federal Register on August 4, 1987 (52 FR 28876).

The company furnished new information to the Department which showed an additional State where worker separations occurred in 1986 that was not included in the amended certification. Accordingly, the amended certification is changed to include the State of California where additional worker separations occurred.

The intent of the certification is to cover all workers of Santa Fe Minerals, Incorporated, Southwest Exploration District in all locations. The amended notice applicable to TA-W-19,559 is hereby issued as follows:

All workers of Santa Fe Minerals, Incorporated, Southwest Exploration District, Midland, Texas and all other workers of the Southwest Exploration District operating in the states of Texas, Louisiana, Oklahoma and California who became totally or partially separated from employment on or after April 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of August 1987.

Robert O. Deslongchamps,  
Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-19450 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

# **Mine Safety and Health Administration**

[Docket No. M-87-164-C]

## **Petition for Modification of Application of Mandatory Safety Standard; Barbara Kay Coal Corp.**

Barbara Kay Coal Corporation, HC 61, Box 1295, Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 5 Mine (I.D. No. 15-05324) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The No. 5 Mine is in the Thacker Seam ranging from 40 to 47 inches in height, with consistent ascending and descending grades creating dips in the coal bed.
3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it could strike and destroy roof support and limit the equipment operator's visibility, increasing the chances of an accident.
4. For these reasons, petitioner requests a modification of the standard.

## **Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,  
Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 13, 1987.

[FR Doc. 87-19444 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-26-M]

## **Petition for Modification of Application of Mandatory Safety Standard; Gilpatrick Construction Co., Inc.**

Gilpatrick Construction Company, Inc., 714 West Monroe, Riverton, Wyoming 82501 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to

its Crusher No. 1-35 Mine (I.D. No. 48-01297), and its Crusher No. 2-35 Mine (I.D. No. 48-01290), both located in Fremont County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance grounding systems be tested immediately after installation, repair, and modification, and annually thereafter.

2. Petitioner requests a modification of the standard as it pertains to the testing of the resistance of the grounding electrodes where the portable plants relocate.

3. In support of this request, petitioner states that—

(a) When a grounding electrode system is made, one or more of the electrodes specified below will be used. Made electrodes will be imbedded below the permanent moisture level;

(b) Made electrodes will be free from nonconductive coatings such as paint or enamel;

(c) Where more than one electrode system is used (including those used for lightning rods), each electrode of one system will not be less than 6 feet from the other electrode of another system;

(d) Rod and pipe electrodes will not be less than 8 feet in length;

(e) Electrodes of pipe or conduit will not be smaller than ¾ inch trade size and, where of iron or steel, shall have the outer surface galvanized or otherwise metal-coated for corrosion protection;

(f) Electrodes of rods of steel or iron shall be at least ⅝ inch diameter. Nonferrous rods or their equivalent will not be less than ½ inch in diameter;

(g) Where rock bottom is not encountered, the electrodes will be driven to a depth of less than 4 feet. Where rock bottom is encountered at a depth of less than 4 feet, electrodes not less than 8 feet long will be buried in a trench;

(h) The ground rods and associated bonds will be visually inspected for physical deterioration and mechanical bonding each time a portable operation is relocated;

(i) Annual ground bed measurements shall be performed at the site where any portable plant remains in the same location for more than one calendar year; and

(j) The grounding conductor is not susceptible to breaking due to flexing and disconnecting/reconnecting during these moves. Therefore, equipment grounding conductor continuity

measurements will be performed after each relocation of a portable plant.

4. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Acting Associate Assistant Secretary for Mine Safety and Health.*

Date: August 13, 1987.

[FR Doc. 87-19445 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-87-141-C]

#### Petition for Modification of Application of Mandatory Safety Standard; Lester Coal Co.

Lester Coal Company, Box 76, Ironton, Ohio 45638 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 5 (I.D. No. 15-15522) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 5 mine is in the Thacker Seam ranging from 29 to 52 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it could strike and destroy roof support and limit the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All

comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Acting Associate Assistant Secretary for Mine Safety and Health.*

Date: August 13, 1987.

[FR Doc. 87-19446 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

#### [Docket No. M-87-183-C]

#### Petition for Modification of Application of Mandatory Safety Standard; Turris Coal Co.

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that short circuit protection for trailing cables be set so as not to exceed the maximum allowable instantaneous settings as specified.

As an alternate method, petitioner proposes to set the instantaneous trip units feeding the #2 AWG cable in the power distribution system at 1000 AMPS.

3. Petitioner states that the adjustable trip units have shown to be in error + / - 25% on the low and high settings and as much as 50% mid-range. Therefore, with calibrated breakers there will be a guarantee of accuracy.

4. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

*Acting Associate Assistant Secretary for Mine Safety and Health.*

Date: August 17, 1987.

[FR Doc. 87-19447 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-185-C]

**Petition for Modification of Application of Mandatory Safety Standard; Virginia Crews Coal Co.**

Virginia Crews Coal Company, P.O. Box 727, Jaeger, West Virginia 24844-0727 has filed a petition to modify the application of 30 CFR 75.316 (ventilation system and methane and dust control plan) to its No. 14 Mine (I.D. No. 46-04702) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine be provided.

2. Petitioner seeks a modification of the application of that portion of the standard which requires a ventilation plan with bleeder entries in areas where pillars have been wholly or partially extracted.

3. As an alternate method, petitioner proposes to establish a mining system so that as each working section of the mine is abandoned it can be isolated from the active workings of the mine with explosion proof seals or bulkheads. In support of this request, petitioner states—

(a) Adequate face and escapeway ventilation will be maintained at all times to meet or exceed the minimum requirements;

(b) A minimum volume of 12,000 cubic feet per minute (C.F.M.) of air will be delivered to the intake end of the pillar line;

(c) Safe examination of the entire length of a bleeder system would expose the examiner to prolonged periods of duress while crawling;

(d) Maintaining the bleeder entries free of water, roof falls or other obstruction would subject miners to unwarranted hazards; and

(e) The establishment of a bleeder system would create an unnecessary loss of coal reserves at the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,  
*Acting Associate Assistant Secretary for Mine Safety and Health.*

Date: August 17, 1987.

[FR Doc. 87-19448 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

**Occupational Safety and Health Administration**

**Alaska State Standards; Approval**

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the *Federal Register* (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of the State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alternation in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated November 28, 1984 from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards revocations amendments comparable to 29 CFR Part 1910 Revocations of Advisory and Repetitive Standards, as published in the *Federal Register* (49 FR 5318) on February 10, 1984.

Regional and State review revealed discrepancies in the State's responses. On March 20, 1985, the submission was forwarded to the OSHA National Office for review. While undergoing National

Office review, a corrective amendment dated August 16, 1985 was received by OSHA, Region X on August 22, 1985. The corrective amendment did not resolve all of the previously identified deficiencies. On August 27, 1986, by direction of the National Office, the State's submission was returned for corrective action.

On October 21, 1986, the State resubmitted its revocations with a second corrective amendment. The second amendment was accomplished administratively by permission of the Alaska Office of the Attorney General as the required corrections were deemed to be of a minor nature.

These State standards which were originally contained in Alaska Administrative Code AAC 01., received OSHA approval during the State's developmental period commencing on April 25, 1973 through certification on September 14, 1977.

The State's revocations were adopted on July 24, 1984 with an effective date of September 12, 1984, after public notification of the comment period was published in the Statewide media on June 15, 18, 21, and 22, 1984. The public comment period was open for thirty days by Jim Robison, Commissioner, under authority vested by AS 19.60.020. No requests for a hearing were received. Subsequently, the State's Corrective amendment was adopted on May 10, 1985 with an effective date of June 9, 1985, after public notification of the comment period was published in the Statewide media on March 6, and 13, 1985. The public comment period was open for thirty days by Jim Robison, Commissioner, under authority vested by AS 19.60.020. No requests for a hearing were received.

On October 21, 1986, a second Corrective Administrative Amendment was forwarded to Region X for inclusion in the State's submittal for revocations. The State has retained several of the OSHA revoked standards. They are: 1910.28(a)(3)/AAC 01.1108(b)(3) Guardrails; 1910.28(p)(1)/AAC 01.1108(Q)(1) Interior Hung Scaffolds; 1910 Subpart M/AAC 01.0601, AAC 01.0602, AAC 01.0603 in its entirety; 1910.261/AAC 07.335 through 07.370(2)—Pulp, Paper and Paperboard Mills, all standards in this paragraph retained with previously approved mandatory language; 1910.262(cc)(1)/AAC 13.110(dd) Laundry Washer Tumbler or Shaker-Interlocking Device.

2. *Decision.* Having reviewed the State submissions in comparison with the relevant Federal standards revocations, OSHA has determined that the State standards revocations are at

least as effective as the comparable Federal standards revocations. The State has elected to remain more stringent by retaining several of the previously approved standards. OSHA therefore approves these State standards amendments.

**3. Location of supplement for inspection and copying.** A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 8003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

**4. Public participation.** Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective August 25, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 15th day of June 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 87-19454 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-26-M

### Nevada State Standards; Approval

**1. Background.** Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been

approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the *Federal Register* (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated June 5, 1987, from Nancy C. Barnhart to Raymond J. Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response; Interim Final Rule and Correction (December 19, 1986, 51 FR 45654 and May 4, 1987, 52 FR 16241). This standard is contained in the Division of Occupational Safety and Health Standards for General Industry. The subject standard, 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, was adopted by reference on March 16, 1987 and May 4, 1987 pursuant to Nevada State law, section 618.295.

**2. Decision.** Having reviewed the State submission in comparison with the Federal standard, it has been determined that the standard is identical to the Federal standard and accordingly is approved.

**3. Location of Supplement for Inspection and Copying.** A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, CA 94102; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

**4. Public Participation.** Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is identical to the Federal Standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with procedural

requirements of State law and further participation would be unnecessary.

This decision is effective August 25, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 6th day of July 1987.

James W. Lake,

Acting Regional Administrator.

[FR Doc. 87-19455 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-26-M

### Puerto Rico State Standards; Approval

**1. Background.** Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the *Federal Register* (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan for the adoption of Federal standards as State standards by reference. Section 1953.20 of Title 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated June 15, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO to Acting Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Asbestos, tremolite, anthophyllite, and actinolite, 29 CFR 1910.1001, as published in the *Federal Register* (51 FR 22733) dated June 20, 1986; Occupational Exposure to Cotton Dust—Correction and Information Collection, 29 CFR 1910.1043, as published in the *Federal Register* (51 FR 24324) dated July 3, 1986; and Occupational Exposure to Ethylene Oxide—Final Rule, 29 CFR 1910.1047, technical amendments and corrections as published in the *Federal Register* (51

FR 25053). These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on September 18, 1986, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has also submitted a letter dated June 29, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO, to Acting Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Electrical Standards for Construction—Final Rule, 29 CFR Part 1926, as published in the *Federal Register* (51 FR 25294) dated July 11, 1986; and Asbestos, tremolite, anthophyllite, and actinolite, 29 CFR 1926.55 and 1926.58, as published in the *Federal Register* (51 FR 22756) dated June 20, 1986. These standards which are contained in the Puerto Rico Rules and Regulations, Number Ten (equivalent to 29 CFR Part 1926) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on September 18, 1986, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., Munoz Rivera Avenue 505, Hato Rey, Puerto Rico 00917; and the Directorate of Federal—State operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional

Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective August 25, 1987.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this tenth day of July 1986.

James W. Stanley,  
Acting Regional Administrator.

[FR Doc. 87-19456 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-26-M

### **Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 87-80; Exemption Application No. D-5512 et al.]

### **Grant of Individual Exemptions: Bill Kelley Chevrolet, Inc., et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing,

unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### **Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 1847, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### **Bill Kelley Chevrolet, Inc. Employees Retirement Plan (the Plan) Located in Hallandale, Florida**

[Prohibited Transaction Exemption 87-80; Exemption Application No. D-5512]

### **Exemption**

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain property by the Plan to Mr. Stephen A. Kelley and Mr. William J. Kelley, parties in interest with respect to the Plan, provided the sales price is not less than the fair market value of the property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 8, 1986 at 51 FR 11995.

The notice of proposed exemption published in the *Federal Register* on April 8, 1986 (51 FR 45962) stated that an appraisal of the real property located at NE. 7th Street and 1st Avenue, Hallandale, Florida (the Property) was performed on March 9, 1984 by Fred E. Welker, S.R.E.A. and Florence Wipplinger of Fort Lauderdale, Florida (the Welker Appraisal). The Welker Appraisal established the fair market value of the Property at \$275,000.

A comment was received by the Department questioning the valuation of

the Property as determined by the Welker Appraisal. The commentator is a Plan participant who wrote to the Department on behalf of himself and four other participants. These individuals have substantial account balances in the Plan and obtained another appraisal of the Property which was performed by L.B. Slater, N.A.I.F.A. of Hollywood, Florida (the Slater Appraisal). The Slater Appraisal established the value of the Property at \$387,310 as of May 12, 1986.

As a result of the different valuations of the Property set forth in the Welker Appraisal and the Slater Appraisal, it was determined that a third appraisal should be obtained from an independent, qualified appraiser to be selected by Fred Welker, Florence Wipplinger and L.B. Slater. A third appraisal, was, in fact, performed by Earl R. Chesler, S.R.E.A., C.R.E.. Mr. Chesler's appraisal (The Chesler Appraisal) established the fair market value of the Property at \$319,000 as of October 29, 1986. The Employer has agreed to pay in cash to the Plan the higher of \$319,000 or the fair market value of the Property on the date of sale. After consideration of the entire record, the Department has determined to grant the proposed transaction based on the price established by the Chesler Appraisal provided that that price is not less than the fair market value of the Property on the date of sale.

**FOR FURTHER INFORMATION CONTRACT:** Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

#### **SEI Property Fund (the Fund) Located in Chicago, IL**

[Prohibited Transaction Exemption 87-81; Application No. D-6915]

#### **Exemption**

##### **Section I. Exemption for Certain Transactions Involving the Fund**

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party in interest

with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not SEI Corporation (SEI), the investment manager for the Fund (the Investment Manager), or one of the affiliates of SEI or the Investment Manager, or any other Fund maintained by SEI, the Investment Manager, or one of their affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of all other Participating Plans maintained by the same employer or employee organization on the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 337(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party in interest is not SEI, the Investment Manager, or any affiliate of

SEI or the Investment Manager, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of \$25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply

to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of SEI, the Investment Manager, or any of the affiliates of SEI or the Investment Manager, and the applicable conditions of Section III are met.

#### *Section II. Excess Holdings Exemption for Employee Benefit Plans*

(a) The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

#### *Section III. General Conditions*

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of SEI, the Investment Manager or an affiliate of SEI or the Investment Manager, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provision of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of SEI, the Investment Manager, or any affiliate of SEI or the Investment Manager, or commercial or financial information which is privileged or confidential.

#### *Section IV. Definitions and General Rules*

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may thereafter be established by SEI or any affiliate of SEI, and which will be operated and managed by the Investment Manager or any affiliate of the Investment Manager in essentially the same manner as the SEI Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, under common control with the person,

(2) Any office, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a

brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contribution paid to or under that plan for each year.

(f) The term as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results for an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate

interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 16, 1987 at 52 FR 19606. Written Comments: The applicant submitted a comment with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 4 of the Summary of Facts and Representations in the Notice states that none of the individual Trustees of the Fund, nor any of the employees, officers, directors, or shareholders of SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Fund.

Paragraph 4 states further that none of the individual Trustees of the Fund, nor any of the employees, officers, directors, or shareholders of SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, will serve as a director or officer of any sponsor of any Participating Plan.

The applicant states that SEI is a publicly-held corporation whose stock is traded on the NASDAQ Over-the-Counter Markets. The applicant states further that the sponsors of the Participating Plans are likely to be large corporations which may have hundreds of officers, together with a large board of directors. Therefore, the applicant represents that it would be impossible to ensure that no officers or directors of a sponsor of a Participating Plan own any stock of either SEI or the Investment Manager. However, the Securities and Exchange Commission requires a filing of Form 13-D when a person owns five percent or more of a company's stock. SEI states that it can monitor compliance at this level. Accordingly, the applicant wishes to restrict the representations made in Paragraph 4 of the Notice to shareholders owning a five percent or more interest in SEI or the Investment Manager or an affiliate of SEI or the Investment Manager.

After consideration of the entire record, the Department has determined to grant the exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1987.

**Elliot I. Daniel,**

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-19488 Filed 8-24-87; 8:45 am]

**BILLING CODE 4510-29-M**

**[Application No. D-6605] et al.**

**Proposed Exemptions; Classic Autos; Ltd., et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions for the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW, Washington, DC 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete

statement of the facts and representations.

**Classic Autos, Ltd. Pension Plan and Trust (the Plan) Located in Milford, MI**

[Application No. D-6605]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26 (1975 C.B. 772). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective May 18, 1982, to the past contribution to the Plan, on May 18, 1982, of the vendor's interests (the Interests) in two land contracts by Classic Autos, Ltd. (the Employer).<sup>1</sup>

*Summary of the Facts and Representations*

1. The Plan is a defined benefit pension plan with one participant, Mr. Saunders. As of December 31, 1982, the Plan had assets of approximately \$90,000. Mr. Saunders and his wife (the Saunders) are the Plan's trustees.

2. The Interests represent the seller's interests in two land contracts (the Contracts) which involved sales of real property from the Saunders to unrelated third parties. One Contract, dated March 14, 1978, had a remaining principal balance of \$14,107.58 as of the date of the transaction, bore an interest rate of 8½%, requires payments of \$170.00 per month, has no due date and is secured by real property which was sold for \$22,000. The other Contract, dated November 19, 1978, had a remaining principal balance of \$11,116.04, bore interest at a rate of 9%, requires payments of \$125.00 per month, is due November 19, 1987 and is secured by real property which was sold for \$13,000.

3. The applicant represents that in 1982, the Employer was experiencing financial difficulties as a result of the overall depressed economy of the Detroit metropolitan areas. As a result, the Employer was not able to make the necessary cash contribution to the Plan. Mr. Saunders contributed the Interests to the Employer to provide the Employer with sufficient cash equivalents to be able to fund the Plan. The Employer

then contributed the Interests to the Plan.

4. The applicant represents that the Saunders consulted with their attorney with respect to the contribution. The Saunders then contacted the Plan's contract administrator, Retirement Planning & Servicing, Inc. (RPS) to determine the proper interest rate to utilize in discounting the Interests. RPS estimated that based on the payment history of and the security underlying the Interests, that an interest rate between the short-time Treasury Bill rates and Government National Mortgage Association (GNMA) yield rates was appropriate. At the time of the contribution, short-term Treasury Bill rates were approximately 12.8%, and GNMA yield rates were approximately 13.7%. RPS decided that, since GNMA rates were for longer term obligations, an interest rate between Treasury Bill and GNMA rates were appropriate and discounted the Interests to yield 13%, which RPS believed represented a fair market rate of return for the Interests. Thus, the Interests, with a combined outstanding principal of \$25,224.62, were valued at \$21,451.28 for the purposes of the contribution.

5. The applicant represents that the Saunders relied on prior counsel's determination that the transaction was proper, upon RPS's determination as to the proper value of the Interests, and were not aware that the transaction was prohibited until it was discovered during an audit of the Plan by the Internal Revenue Service, after which this exemption application was filed.

6. In summary, the applicant represents that the transaction satisfies the criteria of section 4975(c)(2) of the Code because: (a) Mr. Saunders is the Plan's sole participant, consulted prior legal counsel and relied on RPS in determining the fair market value of the Interests; (b) the Interests were the only contribution the Employer could afford to make for the Plan year; and (c) the Interests represented less than 25% of the Plan's assets.

**FOR FURTHER INFORMATION CONTACT:**

David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Medical Tree Pharmacy, Inc. Pension Plan (the Plan) Located in Santa Cruz, California**

[Application No. D-6904]

*Proposed Exemption*

The Department is considering granting an exemption under the authority section 4975(c)(2) of the Code and in accordance with the procedures

set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of a certain parcel of real property located in Kailua-Kona, Hawaii by the Plan to Medical Tree Pharmacy, Inc. (the Employer), provided that the terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transactions is consummated.

*Summary of Facts and Representations*

1. The Plan is a defined contribution pension plan with two plan participants. The two Plan participants are Thomas and Helene Dembski, the co-owners of the Employer.<sup>2</sup> As of the Plan year ending September 30, 1986 (FY 85) the Plan had total net assets of \$74,351. The trustee of the Plan is Thomas Dembski (the Trustee).

2. On February 2, 1982, the Plan purchased an unimproved residential lot located in Kailua-Kona, Hawaii (the Property). The Property was purchased from an unrelated party at a purchase price of \$35,000. The Property represents 40% of Plan assets. The Trustee believed that the Property would appreciate in value, and thus be a good investment for the Plan. However, the Property has not appreciated in value.

3. An exemption is requested to permit the sale of the Property by the Plan to the Employer. The proposed purchase price is \$37,397. The Plan has paid another \$2,397 in property taxes and association dues in connection with the Property. The amount of \$37,397 is based upon an independent appraisal of the Property performed by Bill M. Brodbeck, M.A.I. (the Appraiser). The Appraiser established the fair market value of the Property at \$35,000 as of November 12, 1985. The Appraiser has updated his original appraisal and determined the fair market of the Property remained at \$35,000 as of November 6, 1986.

4. The applicant represents that the sale of the Property would be in the best interests of the Plan because the Property has not appreciated in value and the proceeds from the sale would be better invested in money market certificates or bonds.

<sup>1</sup> Since William Saunders is the sole shareholder of the Employer and is the sole plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

<sup>2</sup> Since Thomas and Helen Dembski are co-owners of the Employer, the only participants in the Plan, and are spouses, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries;

(2) The Plan will be able to dispose of a non-appreciating asset which represents approximately 40% of Plan assets; and

(3) The Plan will receive not less than the fair market value of the Property.

**FOR FURTHER INFORMATION CONTACT:** Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Masonry Vacation Trust Fund (the Vacation Plan) and Masonry Industry Apprenticeship and Journeyman Training Fund (the Training Plan; collectively, the Plans) Located in Portland, Oregon**

[Application Nos. D-7016 and D-7023, respectively]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer by the Vacation Plan to the Training Plan of \$10,000 from certain residual assets (the Reserves) that are held by the Vacation Plan.

#### *Summary of Facts and Representations*

1. The Vacation Plan is a multiemployer welfare plan established in accordance with section 302 of the Labor Management Relations Act of 1947, as amended. The Vacation Plan was established on January 1, 1976 pursuant to the terms and conditions of a trust agreement (the Vacation Plan Trust Agreement) between the Bricklayers International Union and Allied Crafts, Local No. 1 of Oregon (the Union) and two employer associations, the Mason Contractors Association of Oregon (the Mason Contractors Association) and the Tile Contractors Association of Oregon. The Vacation Plan maintains its principal place of business in Portland, Oregon. It holds and administers payments received by contributing employers who are signatory to certain collective bargaining agreements in order to provide vacation benefits to participants in the Vacation Plan. As of December 31, 1986, the Vacation Plan had 603 participants and net assets of \$62,255.

2. The Training Plan is a multiemployer welfare plan that was established on January 1, 1965 also in accordance with the Labor Management Relations Act of 1947, as amended. Under the terms of a trust agreement (the Training Plan Trust Agreement) between the Union and the Mason Contractors Association, the Training Plan instructs apprentices and it trains and retrain journeymen and mechanics in the performance of all work within the authority of the Union. As of October 31, 1986, the Training Plan had 300 participants and net assets of \$19,544.

3. The geographic jurisdictions covered by the collective bargaining agreements under which the Plans have been established include various countries in the States of Oregon and Washington. Both Plans have three employer and three Union trustees (the Trustees). Two of the Trustees are common to each Plan. In addition, the applicants represent that the Plans share similar participants but they are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

4. The Vacation Plan pays out vacation benefits to participants based upon employer contributions. Vacation benefits are paid at the rate of \$1 per hour for journeymen and apprentices and at the rate of \$.50 per hour for helpers. On a monthly basis, vacation benefits and remittance reports are submitted by each contributing employer to Kipp and Company Administration, Inc. of Portland, Oregon, which serves as the Vacation Plan Administrator (the Vacation Plan Administrator). The funds are then deposited into individual savings accounts established on behalf of the participants with First Interstate Bank of Oregon (the Bank), located in Portland, Oregon. Vacation funds become immediately available to a participant provided the participant has completed a W-9 Form that will permit the Bank to report any interest earned on the participant's account to the Internal Revenue Service. If the participant has not completed such form, his/her vacation benefits will be deposited on behalf of the participant in the general account of the Vacation Plan.

5. Article X, Section 10.2 and Article XI, Section 11.1 of the Vacation Plan Trust Agreement provides that the amount credited to a participant's account in the Vacation Plan may accumulate from year to year. However, if the participant's vacation account becomes inactive (i.e., no deposits or withdrawals are made) for a period of 36 consecutive calendar months, all

monies revert to the Vacation Plan and are considered a payment by the employee to the Vacation Plan. Section 11.2 of Article XI states that the Vacation Plan Trustees may, at their discretion, transfer unclaimed payments to any other tax exempt employee benefit plan the Vacation Plan Trustees deem appropriate, including, but not limited to, the Training Plan, provided such contributions are consistent with the federal law and with the laws of the State of Oregon.

6. As of December 31, 1986, the Vacation Plan had on deposit in the Reserves \$30,521 in vacation funds that had gone unclaimed for a period of more than three years. The Reserves have been accruing interest since the time of their initial deposit. The Vacation Plan Trustees attribute the Reserves to the failure by Vacation Plan participants to withdraw the funds in a timely manner despite diligent efforts by the Vacation Plan Administrator to locate these individuals. These efforts have included sending letters to participants at their last known address in order to inform participants to withdraw their unclaimed vacation funds from the Bank. In addition, the Vacation Plan Administrator has sent letters to other bricklayer locals located west of the Mississippi River, and, in particular, to those locals having reciprocity agreements with the Vacation Plan. The locals and trust administrators have been asked to review their records and attempt to locate missing participants. Although such efforts have resulted in the location of not more than two participants, the Vacation Plan Administrator has advised that the procedure will continue in the future.

7. Accordingly, the Vacation Plan Trustees request an administrative exemption in order to transfer \$10,000 of the cumulative Reserve total to the Training Plan. The transferred Reserves will be used to upgrade training for participants and increase the number of participants in the apprenticeship program. The retained Reserves, in the amount of \$20,521, will be used to cover the administrative expenses of the Vacation Plan. In 1985 and 1986, the administrative expenses of the Vacation Plan were \$9,607 and \$11,079, respectively. The Reserves transferred to the Training Plan as well as those retained by the Vacation Plan will not be used to offset any employer contributions or inure to the benefit of any contributing employer. In addition, in accordance with Article IX, Section 10 of the Training Plan Trust Agreement, the Training Plan will indemnify the Vacation Plan for any and all claims

that may be made upon the Vacation Plan by a participant in connection with the transferred reserves.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the transfer will represent a one-time shifting of assets between the Vacation Plan and the Training Plan; (b) the rights of Vacation Plan participants will be protected by means of the indemnification procedure whereby the Training Plan will indemnify the Vacation Plan for any and all claims, rights and interests a Vacation Plan participant can enforce against the Vacation Plan due to the transfer of \$10,000 from the Reserve total; and (c) the Trustees of the Plans have determined that the proposed transfer of the Reserves is in the best interests of the participants and beneficiaries of the Plans.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Jan D. Broady of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**Earl R. Waddell & Sons, Inc., Profit Sharing Plan and Trust (the Plan)**  
Located in Fort Worth, TX

[Application No. D-7058]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective January 17, 1986, to the past cash sale, on January 17, 1986, of a \$100,000 par value Federal National Mortgage Association (FNMA) mortgage backed trust certificate (the Bond) by Earl R. Waddell & Sons, Inc. (the Employer) to the Plan, provided that the Plan paid no more than the Bond's fair market value as of the date of the transaction.

**Summary of Facts and Representations**

1. The Plan is a defined contribution profit sharing plan. It has 32 participants and, as of June 30, 1986, assets of \$2,885,925. The trustees (the Trustees) of the Plan are Allen R. Waddell, Mark S. Waddell and Marsha W. Moller, who are also shareholders and employees of the Employer and participants of the Plan.

2. The Bond is a security issued by FNMA and backed by home mortgages. The Bond has a par value of \$100,000, earns interest at an annual rate of 10.9% and matures in December, 1987. On January 17, 1986, the Bond had a market value of \$104,187.50, according to quotations in the Wall Street Journal, which produced a yield of 8.33%. In addition, there was accrued and unpaid interest of \$908.33 owed to the Employer on the Bond.

3. The Employer sold the Bond to the Plan for its par value of \$100,000. The \$4,187.50 difference in the market value and the sale price, and the \$908.33 in accrued and unpaid interest was treated as a contribution to the Plan for the Plan year ending June 30, 1986, for which the Employer took an income tax deduction.

4. The applicant represents that neither the Employer nor the Trustees knew that the sale of the Bond to the Plan was a prohibited transaction. They believed that the transaction was in the interests of the Plan and its participants and beneficiaries in that the Plan obtained the Bond at a price more favorable than the Plan would have paid for a similar bond on the market. The applicant also represents that the Plan bore no expenses with respect to the transaction.

5. In summary, the applicant represents that the transaction satisfied the criteria of section 408(a) of the Act because:

(a) The Plan benefited from the transaction because the Plan was able to purchase the Bond at a substantial discount from its fair market price; (b) the Plan bore no expenses with respect to the sale; and (c) the price of the Bond was determined by reference to the quotation listed in the Wall Street Journal.

**FOR FURTHER INFORMATION CONTACT:**

David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Victor J. Tofany, M.D., P.C. Employee Retirement Plan and Trust (the Plan)**  
Located in Rochester, New York

[Application No. D-7174]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of a certain parcel

of unimproved real property (the Property) to Victor J. Tofany, M.D. (Dr. Tofany), a disqualified person with respect to the Plan; provided that the terms and conditions of the Sale are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

**Summary of Facts and Representations**

1. The Plan is a money purchase pension plan with total assets of \$260,175.69 as of May 31, 1986. Dr. Tofany is the sole participant and he and Marion D. Tofany are the trustees of the Plan.<sup>3</sup>

2. The Property is located at 2000 Townline Road, in the town of Springwater, Livingston County, New York. The Plan purchased the Property, constituting 86.1971 acres, from an unrelated party on June 18, 1981 for \$35,000. Since the acquisition of the Property, the Plan has expended \$4,195.86 in real estate taxes. The applicant represents that the Property has not been improved and that he has not used the Property during the holding period.

3. The applicant requests an exemption that will permit the Plan to sell the Property to Dr. Tofany for cash in order to improve the Plan's liquidity affording the trustees the opportunity to seek investment alternatives offering greater diversification of assets.

4. The Property was appraised by William Hugh Turner, a qualified independent real estate appraiser with RI-CO Realty, Inc. in Fishers, New York, as of May 5, 1987 and updated as of June 16 and July 7, 1987. The applicant represents that he and Mr. Turner are unrelated and are not engaged in any business dealings. Mr. Turner appraised the fair market value of the Property as \$48,216. The applicant proposes to purchase the Property from the Plan for cash in amount of its fair market value on the date of the Sale. The fair market value of the Property is greater than the Plan's costs and expenses for the acquisition and holding of the Property. The applicant represents that the Plan will incur no expenses or fees in connection with the Sale.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Sale will be a one-time transaction for cash;

<sup>3</sup> Since Dr. Tofany is the sole Plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II pursuant to section 4975 of the Code.

(2) The Sale will improve the Plan's liquidity;

(3) The Plan will receive the fair market value of the Property as determined by a qualified independent real estate appraiser; and

(4) The Plan will pay no expenses or fees in connection with the Sale.

Notice to Interested Persons: Because Dr. Tofany is sole Plan participant, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

**FOR FURTHER INFORMATION CONTACT:**

Mrs. Betsy Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-19489 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-29-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Humanities; Meetings**

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

**FOR FURTHER INFORMATION CONTACT:**

Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. DATE: September 10-11, 1987

TIME: 9:00 a.m. to 5:00 p.m.

ROOM: 430

PROGRAM: This meeting will review applications for Preservation Projects, submitted to the Office of Preservation, for projects beginning after January 1, 1988.

2. DATE: September 4, 1987

TIME: 9:00 a.m. to 3:00 p.m.

ROOM: 730

PROGRAM: This meeting will review applications for United States Newspaper Programs, submitted to the Office of Preservation, for projects beginning after January 1, 1988.

Stephen J. McCleary,

*Advisory Committee Management Officer.*

[FR Doc. 87-19430 Filed 8-24-87; 8:45 am]

BILLING CODE 7536-01-M

**NATIONAL SCIENCE FOUNDATION**

**Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the task force followed by a public hearing on September 22, 1987.

**Meeting:**

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date and Time: September 22, 1987, 7:30 a.m. to 9:15 a.m.

Place: Conference Rooms G&H, Conference Center, University of New Mexico, 1634 University Blvd., NE, Albuquerque, New Mexico.

Purpose: The purpose of the task force on Women, Minorities and the Handicapped is to: Examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally assisted research programs; coordinate existing Federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers; suggest cooperative interagency programs for promoting such employment; identify exemplary programs in the state, local or private sectors; and develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education, and

Social Aspects, as well as other business of the task force.

#### Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date and Time: September 22, 1987, 9:30 a.m. to 4:45 p.m.

Place: Conference Center, University of New Mexico, 634 University Boulevard, NE, Albuquerque, New Mexico.

Purpose: The task force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education, and social aspects.

Testimony will be heard in three ways: Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; summary statements from the floor of 3-minute duration accompanied by any longer written statements or materials for the record; and written testimony submitted to the task force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology; 330 C Street, SW; Washington, DC 20201.

All meetings and public hearings of the task force are open to the public and all proceedings will be recorded and will be available at the task force offices.

Sue Kemnitzer,  
Executive Director.

August 17, 1987.

[FR Doc. 87-19371 Filed 8-24-87; 8:45 am]

BILLING CODE 7555-01-M

#### NUCLEAR REGULATORY COMMISSION

##### Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Review of a License Application

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication which describes the NRC's process for

licensing a low-level radioactive waste disposal facility within the time required by the Low-Level Radioactive Waste Policy Amendments Act of 1985. This document also estimates the level of effort and expertise that is needed to review a license application within the required time. It is intended to be used by the NRC staff as well as States and interested parties to provide a better understanding of what the NRC envisions will be involved in licensing a low-level radioactive waste disposal facility.

**ADDRESS:** Copies of NUREG-1274 may be purchased by calling the U.S. Government Printing Office on (202) 275-2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37081, Washington, DC 20013-7082.

**FOR FURTHER INFORMATION CONTACT:** Clayton L. Pittiglio, Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4529.

**SUPPLEMENTARY INFORMATION:** The NRC is the Federal agency that has the responsibility for licensing commercial low-level radioactive waste disposal facilities for Non-Agreement States. The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) requires that the NRC establish procedures and develop the technical capability to process the license application for a low-level radioactive waste disposal facility and to complete the review (except licensing hearing) of the application, to the extent practicable, within 15 months of its receipt. The NRC staff's review includes (1) the evaluation of an applicant's Safety Analysis Report (SAR) and the issuance of a draft and final Safety Evaluation Report (SER) and (2) the evaluation of an applicant's Environmental Report (ER) and the issuance of a draft and final Environmental Impact Statement (EIS). The preparation of the SER and EIS will take place concurrently.

This document also (1) identifies the resources, personnel, and disciplines that the staff believes are needed to evaluate both the SAR and the ER, (2) defines the steps necessary to complete the review within the required 15 months, and (3) provides the rationale and regulatory basis for the various license review steps.

Dated at Silver Spring, Maryland; this 19th day of August 1987.

For the Nuclear Regulatory Commission.

Michael S. Kearney,

Acting Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 87-19438 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

#### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," describes the type and extent of information needed by the NRC to evaluate an application for a medical use license. This revised guide reflects the recent revision to 10 CFR Part 35, "Medical Use of Byproduct Material" (51 FR 36932).

Comments and suggestions in connections with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of August 1987. For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87-19439 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

# **Exemption; Florida Power and Light Co. (St. Lucie Plant, Unit No. 1)**

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-67 that authorizes the operation of the St. Lucie Plant, Unit No. 1 (the facility) at a steady-state power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in St. Lucie County, Florida. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.54(o) states that primary reactor containments shall be subject to the requirements set forth in Appendix J to this part. Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," sets forth the detailed requirements for containment leakage testing. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests.

Section III of Appendix J addresses the specific leakage testing requirements.

III

An exemption request was submitted by the licensee by letter dated January 9, 1987.

IV

The licensee's proposed leak testing of containment air locks is in compliance with the requirements of Appendix J to 10 CFR Part 50, with one exception. The licensee has requested an exemption from paragraph III.D.2(b)(ii) of Appendix J, which states:

Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than  $P_a$ .

Whenever the plant is in cold shutdown, containment integrity is not required. However, if an air lock is opened during cold shutdown, paragraph III.D.2(b)(ii) requires that an overall air lock leakage test at not less than  $P_a$  be conducted after it is closed. The existing air lock doors are so designed that a full pressure, i.e.,  $P_a$  (39.6 psig), test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. Installing strong backs, performing the test, and removing the strong backs, is a cumbersome process requiring at least 14 hours during which access through the air lock is prohibited.

Alternatively, the licensee proposes to test the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate prior to returning to a plant operating condition requiring containment integrity. The licensee contends this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operation.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Moreover, if maintenance has been performed on the air lock since the last successful test pursuant to paragraph III.D.2(b)(i), an overall air lock test will be performed by the licensee instead of the seal test described above.

Accordingly, the staff concludes that the licensee's proposed approach, consisting of testing the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate prior to returning to a plant operating condition requiring containment integrity, is acceptable. Based upon this alternative testing, an exemption from the requirements paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is proper.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The

Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2) are present justifying the exemption.

In a letter dated January 9, 1987, the licensee provided information to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764).

The licensee stated that the application of the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(ii) is not necessary to serve the underlying purpose of these regulations. The basis for this statement is the fact that the alternatives presented limit the postulated accident doses to within the 10 CFR Part 100 guidelines. Therefore, the special circumstances of § 50.12(a)(2)(ii) apply to these specific exemption requests.

Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32 the Commission had determined that the granting of the Exemption will not result in any significant impact on the environment (52 FR 10273).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 19th day of August, 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19440 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

## **OFFICE OF PERSONNEL MANAGEMENT**

### **Excepted Service**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI. Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Leesa Martin, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 30, 1987 (52 FR 28497). Individual authorities established or revoked under Schedules A, B, or C between July 1, 1987, and July 31, 1987,

appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

#### Schedule A

The following exception was established:

##### *Department of the Air Force*

One position of Supervisory Logistics Management Specialist, GM-346-14, in Detachment 2, 2762 Logistics Management Squadron (Special), Air Force Logistics Command, Greenville, Texas. Effective July 13, 1987.

#### Schedule B

No Schedule B exceptions were established or revoked during July.

#### Schedule C

The following exceptions were established:

##### *Department of Commerce*

One Confidential Assistant to the Under Secretary for International Trade. Effective July 2, 1987.

One Congressional Liaison Assistant to the Director, Congressional Relations Staff for Economic Development Administration. Effective July 24, 1987.

##### *Department of Defense*

One Special Assistant for External Affairs and Communications to the Deputy Director, Operational Test and Evaluation. Effective July 8, 1987.

One Personal and Confidential Assistant to the Assistant Secretary of Defense. Effective July 13, 1987.

One Special Assistant to the Director for Strategic Defense Initiative Organization. Effective July 15, 1987.

One Attorney-Advisor (Military) to a Judge, United States Court of Military Appeals. Effective July 16, 1987.

##### *Department of Education*

One Staff Assistant to the Deputy Under Secretary for Management. Effective July 9, 1987.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective July 9, 1987.

One Director, Recognition Division, to the Director, Programs for the Improvement of Practice. Effective July 15, 1987.

One Special Assistant to the Deputy Assistant Secretary for Higher Education Programs. Effective July 15, 1987.

One Confidential Assistant to the Executive Director, Intergovernmental Advisory Council on Education. Effective July 15, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective July 16, 1987.

One Staff Assistant to the Assistant Secretary for Vocational and Adult Education. Effective July 22, 1987.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective July 24, 1987.

##### *Department of Health and Human Services*

One Special Assistant to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families. Effective July 13, 1987.

One Director, Office of Public Affairs to the Assistant Secretary for Human Development Services. Effective July 21, 1987.

One Special Assistant to the Director, Office of Intergovernmental Affairs. Effective July 30, 1987.

##### *Department of Housing and Urban Development*

One Special Assistant to the Under Secretary. Effective July 2, 1987.

One Special Assistant to the Assistant Secretary for Housing. Effective July 9, 1987.

One Executive Assistant to the Under Secretary. Effective July 13, 1987.

One Special Assistant to the Secretary. Effective July 17, 1987.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 21, 1987.

Two Special Assistants to the General Counsel. Effective July 31, 1987.

##### *Department of Justice*

One Confidential Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective July 1, 1987.

One Confidential Assistant to an Associate Deputy Attorney General. Effective July 7, 1987.

One Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective July 7, 1987.

One Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs. Effective July 13, 1987.

One Legislative Aide to the Deputy Assistant Attorney General, Civil Division. Effective July 13, 1987.

##### *Department of State*

One Staff Assistant to the Deputy Secretary. Effective July 8, 1987.

One Staff Assistant to the Secretary. Effective July 8, 1987.

One Protocol Specialist (Ceremonials) to the Chief of Protocol. Effective July 16, 1987.

One Foreign Affairs Officer to the Coordinator for Public Diplomacy. Effective July 27, 1987.

One Legislative Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 27, 1987.

##### *Department of Transportation*

One Special Assistant, Office of Public Affairs, to the Deputy Administrator, Urban Mass Transit Administration. Effective July 1, 1987.

One Executive Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective July 31, 1987.

One Special Assistant to the Secretary. Effective July 24, 1987.

One Research Assistant to the Administrator, National Highway Traffic Safety Administration. Effective July 31, 1987.

##### *Agency for International Development*

One Confidential Assistant to the Deputy Administrator. Effective July 7, 1987.

##### *Consumer Product Safety Commission*

One Special Assistant to a Commissioner. Effective July 2, 1987.

##### *Council on Environmental Quality*

One Confidential Assistant to the Chairman. Effective July 21, 1987.

##### *Federal Home Loan Bank Board*

One Assistant to a Board Member. Effective July 29, 1987.

One Staff Assistant to the Chairman. Effective July 30, 1987.

One Special Assistant to the Chairman. Effective July 30, 1987.

##### *Federal Mine Safety and Health Review Commission*

One Confidential Secretary to the Chairman. Effective July 13, 1987.

##### *U.S. International Trade Commission*

One Staff Assistant to a Commissioner. Effective July 31, 1987.

##### *Interstate Commerce Commission*

One Staff Adviser (Management) to a Commissioner. Effective July 9, 1987.

##### *National Transportation Safety Board*

One Confidential Assistant to a Member. Effective July 13, 1987.

##### *Securities and Exchange Commission*

One Secretary to the Director, Directorate of Economic and Policy Analysis. Effective July 29, 1987.

**Small Business Administration**

One Special Assistant to the Associate Administrator for Business Development. Effective July 27, 1987.

One Special Assistant to the Director of Veterans Affairs. Effective July 29, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., P. 218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-19429 Filed 8-24-87; 8:45 am]

BILLING CODE 5325-01-M

**SMALL BUSINESS ADMINISTRATION**

[Application No. 03/03-0183]

**Application For a License to Operate as a Small Business Investment Company; Liberty Partners, L.P**

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)), by Liberty Partners L.P (the Applicant), One Aldwyn Center, P.O. Box 40A, Villanova, Pennsylvania 19085, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The general partners, limited partners, and management company of the Applicant are as follows:

Name	Title or relationship
Edward F. Sager, 570 Notting-ham Dr., Yardley, PA 19301.	General Partner <sup>1</sup> .
Andrew M. Russin, 3404 Queen Lane, Philadelphia, PA 19129.	General Partner <sup>1</sup> .
PIBC Management Co., One Aldwyn Center, P.O. Box 209, Villanova, PA 19085.	Corporate General Partner.
Liberty Management Co., One Aldwyn Center, P.O. Box 40-A, Villanova, PA 19085.	Investment advisor/Manager.

<sup>1</sup> The General Partners collectively will contribute 1% of the partnership capital. They will own 75% of the management company.

The Applicant, a limited partnership organized under the provisions of the State of Delaware Limited Partnership Act and duly qualified to do business in the Commonwealth of Pennsylvania,

will begin operations with approximately \$2,000,000 of paid-in capital and paid-in surplus to be obtained through a private placement. At this time, it is not known whether any person or entity will own ten percent or more of the capital of the applicant. The applicant will conduct its activities in the Commonwealth of Pennsylvania and the States of New Jersey, Maryland and Delaware, the District of Columbia and Northern Virginia and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operations of the Applicant under their management including adequate profitability and financial soundness in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Philadelphia, Pennsylvania area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,  
Deputy Associate Administrator for Investment.

Dated: August 17, 1987.

[FR Doc. 87-19376 Filed 8-24-87; 8:45 am]

BILLING CODE 8025-01-M

**Region VI Advisory Council Executive Board; Public Meeting**

The U.S. Small Business Administration Region VI Advisory Council Executive Board will hold a public meeting from 5:00 p.m. Sunday, August 30 to 1:00 p.m. Monday, August 31, 1987 at the Sheraton Old Town Hotel in Albuquerque, New Mexico to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph Pena, Regional Administrator, U.S. Small Business Administration, 8625 King George Drive, Bldg. "C", Dallas, Texas 75235-3391, (214) 767-7643.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 17, 1987.

[FR Doc. 87-19375 Filed 8-24-87; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Summary Notice No. PE-87-21]

**Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: September 14, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGG-204), Petition Docket No. \_\_\_\_\_ 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGG-204), Room 915G,

FAA Headquarters Building (FOB 10A),  
800 Independence Avenue, SW.,  
Washington, DC 20591; telephone (202)  
267-3132.

This notice is published pursuant to  
paragraphs (c), (e) and (g) of § 11.27 of  
Part 11 of the Federal Aviation  
Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 19,  
1987.  
**Denise D. Hall,**  
*Acting Manager, Program Management Staff.*

## PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25324	Tropical Airways, Inc.	14 CFR 121.380	To allow petitioner to extend 90 days the time which petitioner must document all maintenance records of life-limited parts for the engines of its DC-8 aircraft and to conduct its proving run and conduct regular scheduled operations during this interim period.
25318	Continental Airlines	14 CFR 121.371(a)	To allow petitioner to contract for the repair and overhaul of selected jet engine parts necessary to support DC-10, B737 and A300 series aircraft with the General Electric Aviation Service Operation, Singapore.

## PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24808	Pan American World Airways	14 CFR 121.433(c)(1)(iii), 121.441(a)(1), and 121.441(b)(1) and Appendix F of Part 121.	To allow petitioner to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check session. In addition, the line check required by § 121.440 would be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training presently required. <i>Granted, August 10, 1987.</i>
24085	Air Transport Association	14 CFR Part 121, Appendix H	To allow petitioner to accomplish total initial and upgrade pilot training and checking in a Phase II simulator, in lieu of a Phase III simulator. <i>Denied, August 10, 1987.</i>
24915	Alaska Air Carriers Association	14 CFR 121.119, 121.651, 135.213, and 135.225.	To allow petitioner member airlines to use weather observations provided by A-Paid Aviation Weather Reporting Stations observers to meet the requirement of providing the latest weather observations for the purposes of conducting instrument approaches and departures. <i>Denied, August 10, 1987.</i>
24779	Flight Safety International	14 CFR 135.293(c) and 135.297	To allow pilots who in the preceding 90 days have successfully completed at least three takeoffs and three landings to a full stop in an airplane to conduct the required 12-month competency checks and the 6-month proficiency checks in petitioner's approved visual simulator. <i>Denied, June 29, 1987.</i> <b>Note.</b> —This is a correction to the disposition published on July 13, 1987 (52 FR 26200).

[FR Doc. 87-19386 Filed 8-24-87; 8:45 am]  
BILLING CODE 4910-13-M

## Federal Highway Administration

Environmental Impact Statements;  
Hays, Travis, and Williamson Counties,  
TX

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for each of four segments of a proposed highway project in Hays, Travis, and Williamson Counties, Texas.

**FOR FURTHER INFORMATION CONTACT:** Gamaliel E. Olvera, District Engineer, Federal Highway Administration, 826 Federal Office Building, Austin, Texas 78701, Telephone: (512) 482-5966.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (TSDHPT), intends to prepare an environmental impact statement (EIS) for each of four segments of a proposed highway that will loop around the city of Austin, Texas. In an overview environmental

assessment, which covered the entire project, it was stated that separate EIS documents would be prepared for each of the four project segments. This highway is being designated as State Highway 45 (SH 45) and is commonly referred to as the Austin Outer Loop.

Segment 1 will extend from the interchange of I.H. 35 and F.M. 1325 southeast to the intersection of S.H. 71 and F.M. 973. This is a distance of approximately 27 miles. Segment 1 will run through Williamson and Travis Counties. Segment 2 will run from the intersection of S.H. 71 and F.M. 973 southwest to I.H. 35 south of the city of Austin. The approximate distance of this segment is 12 miles. This segment will stay within Travis County. Segment 3 will run from I.H. 35 south of the city of Austin northwest to the intersection of R.M. 620 and Quinlan Park Road, a distance of 27 miles. This segment will involve Travis and Hays Counties. Segment 4 will extend from the intersection of R.M. 620 and Quinlan Park Road northeast to the interchange of I.H. 35 and F.M. 1325. This is an approximate distance of 17 miles, and will run through Travis and Williamson Counties.

Each proposed project will be constructed as multiple lane, controlled

access facilities. Each project is needed to relieve the present and projected traffic demands on the exiting roadway network in and around the city of Austin. Many of the existing highways and major arterials are operating near or at design capacity. Projected development in the outlying areas around Austin is expected to aggravate the present traffic demand problems. Federal funds will be used to finance project construction in each of the segments.

Each segment will consider several build alternatives along with a no-build alternative. The build alternatives will study the possibilities of aligning the highway on existing roadways or on new alignments.

There are currently no plans to hold a formal scoping meeting for the proposed project. A public meeting has been held for each of the four project segments. The Segment 1 public meeting was held on March 3, 1987. The Segment 2 public meeting was held on March 24, 1987. The Segment 3 public meeting was held on March 26, 1987. The Segment 4 public meeting was held on March 5, 1987. Public notices will be given of the time and place of each public hearing. The overview environmental assessment is available for review by the public or any

interested party. The draft EIS for each segment will be available for public and agency review and comment.

To ensure that the full range of issues related to each proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and the EIS documents should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Gamaliel E. Olvera,

District Engineer, Austin, TX.

[FR Doc. 87-19408 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: August 19, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

OMB Number: New

Form Number: 1041-T

Type of Review: New Collection

Title: Transmittal of Estimated Taxes Credited to Beneficiaries

Description: This form was developed to implement the provisions of Internal Revenue Code section 643(g) which allows a trustee of a trust to elect to assign any overpayment of estimated tax to a beneficiary (ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be credited to the beneficiaries.

Respondents: Businesses or other for-profit

Estimated Burden: 375 hours

OMB Number: 1545-0008

Form Number: W-2, W-2c, W-2P, W-2AS, W-2GU, W-2NMI, W-2VI, W-3, W-3c, W-3PR, W-3SS, W-3cPR

Type of Review: Revision

Title: Wage and Tax Statement

Description: Employers report income and withholding information on Form W-2. Payers report payments of pensions, annuities, retirement payments, or distributions from an IRA on Form W-2P. The Forms W-2AS, W-2GU, W-2NMI, and W-2VI are variations of the W-2 for use in U.S. possessions. The W-2 is used by the recipient to prepare his income tax return and by IRS to reconcile employment tax returns. W-3 series forms transmit W-2 series forms to SSA for processing.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Burden: 54,844,486 hours

OMB Number: 1545-0067

Form Number: 2555

Type of Review: Extension

Title: Foreign Earned Income

Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.

Respondents: Individual or households

Estimated Burden: 537,698 hours

OMB Number: 1545-0090

Form Number: 1040SS and 1040PR

Type of Review: Revision

Title: U.S. Self-Employment Tax Return, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Propia-Puerto Rico

Description: Forms 1040SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under Internal Revenue Code chapter 2 of the Subtitle A, and provide credit to taxpayer's social security account.

Respondents: Individuals or households, Farms, Businesses or other for-profit

Estimated Burden: 202,067 hours

OMB Number: 1545-0126

Form Number: 1120F

Type of Review: Revision

Title: U.S. Income Tax Return of a Foreign Corporation

Description: Form 1120F is used by foreign corporations to compute their tax liability. Foreign corporations that

do not have a business in the U.S. generally complete Part I. Foreign corporations that have a business in the U.S. generally complete Part II. Foreign corporations that have a branch in the U.S. complete Part III. The IRS uses Form 1120F to determine if the correct amount of income, deductions, and tax have been reported.

Respondents: Businesses or other for-profit

Estimated Burden: 251,877 hours

OMB Number: 1545-0148

Form Number: 2758

Type of Review: Revision

Title: Application for Extension of time to File U.S. Partnership, Fiduciary, and Certain Other Returns

Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by U.S. partnerships, fiduciary, and certain organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Respondents: Businesses of other for-profit, Non-profit institutions, Small businesses or organizations

Estimated Burden: 13,175 hours

OMB Number: 1545-0181

Form Number: 4768

Type of Review: Revision

Title: Application for Extension of Time to File U.S. Estate (and Generation-Skipping Transfer) Tax Return and/or Pay Estate (and Generation-Skipping Transfer) Tax(es)

Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) taxes return and/or to pay the estate (and GST) tax and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Respondents: Individuals or households, Businesses or other for-profit

Estimated Burden: 14,184 hours

OMB Number: 1545-0539

Form Numbers: RL-177, RC-C-1-583, RL-1-183, RL-1-183A, RC-C

Type of Review: Extension

Title: Supplemental Information for Internal Revenue Agent Applications

Description: Helps agency determine applicant's qualifications and availability for current and future employment opportunities, and advises applicants of their eligibility, rating, or defects in their applications. Form is filed with candidate's application or

personnel action file. Failure to secure information may result in applicant's elimination from consideration for current vacancies, for similar future vacancies, or both.

**Respondents:** Individuals or households  
**Estimated Burden:** 163 hours

**OMB Number:** 1545-0619

**Form Numbers:** 6765

**Type of Review:** Revision

**Title:** Credit for Increasing Research Activities (or for Claiming the Orphan Drug Credit)

**Description:** Internal Revenue Code section 38 allows a credit against income tax for an increase in research activities of a trade or business. Section 28 allows a credit for clinical testing expenses in connection with drugs for certain rare diseases. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report and credit. The data is used to verify that the credit claimed is correct.

**Respondents:** Businesses or other for-profit, Small businesses or organizations

**Estimated Burden:** 19,099 hours

**OMB Number:** 1545-0877

**Form Numbers:** 1099-A

**Type of Review:** Extension

**Title:** Information Return for Acquisition or Abandonment of Secured Property

**Description:** Form 1099-A is used by lenders to report foreclosures and abandonments of property that is security for a loan.

**Respondents:** Businesses or other for-profit, Federal agencies or employees  
**Estimated Burden:** 65,000 hours

**OMB Number:** 1545-0885

**Form Numbers:** None

**Type of Review:** Extension

**Title:** Losses, Expenses, and Interest in Transactions Between Related Taxpayers

**Description:** Coverage of this regulation includes the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group to another member under section 267(f)(2) Internal Revenue Code as added by section 174(b)(2) of the Tax Reform Act of 1984.

**Respondents:** Businesses or other for-profit, Small businesses or organizations

**Estimated Burden:** 6,001 hours

**Clearance Officer:** Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

#### U.S. Customs Service

**OMB Number:** 1515-0037

**Form Number:** 5931

**Type of Review:** Reinstatement  
**Title:** Discrepancy Report and Declaration

**Description:** 19 CFR Part 158 requires the use of Customs Form 5931 by vessel masters or their agents, aircraft commanders, operators of other commercial carriers, Customhouse brokers, importers and other parties to correct the manifest and explain manifest discrepancies. The amendment helped to reduce the burden on the importer by not having the declaration portion of the forms signed by the carriers or their agents.

**Respondents:** Businesses or other for-profit

**Estimated Burden:** 34,653 hours

**Clearance Officer:** B. J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**OMB Reviewer:** Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 87-19400 Filed 8-24-87; 8:45 am]

**BILLING CODE 4810-25-M**

#### Public Information Collection Requirements Submitted to OMB for Review

Date: August 19, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW, Washington, DC 20220.

#### Internal Revenue Service

**OMB Number:** 1545-0052

**Form Numbers:** 990-PF and 4720

**Type of Review:** Resubmission

**Title:** Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation. Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

**Description:** Internal Revenue Code section 6033 requires all private foundations including section 4947(a)(1) trusts treated as private foundations to file an annual information return. Section 53.4940-1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a)(1) trusts may file Form 990-PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.

**Respondents:** Individuals or households, Businesses or other for-profit, Non-profit institutions

**Estimated Burden:** 856,483 hours

**Clearance Officer:** Garrick Shear, (202) 535-4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 87-19401 Filed 8-24-87; 8:45 am]

**BILLING CODE 4810-25-M**

#### Customs Service

#### Harmonized System of Tariff Classification Rulings

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of issuance of tariff classification rulings.

**SUMMARY:** Classification of imported merchandise for rate of duty and statistical purposes is determined presently in the U.S. by reference to the Tariff Schedules of the United States (TSUS). The U.S. intends to replace the TSUS on January 1, 1988, by acceding to the International Convention on the Harmonized Commodity Description and Coding System (HS). The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. To provide the public as much notice as possible of the intended change to the U.S. version of the HS and to provide samples of the nomenclature and numerical coding employed under the HS, for several months Customs has been providing advisory classifications under the HS in certain of the ruling

letters it has issued setting forth binding tariff classifications under the TSUS. Customs now intends to include binding classifications under both the TSUS and the HS in tariff classification rulings issued to the public.

**DATE:** August 25, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Durant, Acting Director, Classification & Value Division, (202-566-5868).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Harmonized System (HS) is the culmination of a 10 year effort by the member states of the Customs Cooperation Council (CCC), particularly the U.S. and its major trading partners, to develop a single modern structure for product classification which can be used for customs, tariff, trade statistics, and transport documentation purposes. Based on the present Customs Cooperation Council Nomenclature (CCCN), the HS is a more detailed classification scheme reflecting changes in technology, trade patterns and user requirements.

In August 1981, the President requested the U.S. International Trade Commission to initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the U.S. (TSUS; 19 U.S.C. 1202), the current reference source for determining the classification of imported merchandise, into the structure of the HS. The U.S. conversion provides numerical coding beyond the 6-digit categories of the international system, taking into account U.S. tariff and statistical requirements. Thus, each tariff provision is coded in 8-digits and the tariff reporting number in 10-digits.

This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of U.S. Trade Representative, and republished as TPSC 84-76 on September 30, 1984. A

more comprehensive revision was made in October 1986, and this is the basic working document aimed at U.S. adoption of the HS. In July 1987, the office of the U.S. Trade Representative issued a "Proposed United States Tariff Schedule Annotated In The Harmonized System Nomenclature".

The HS Convention was opened for signature on July 1, 1983, and thus far has been signed by 50 countries and customs unions, including nine who have signed without reservation of ratification or have withdrawn their reservation. The U.S. is expected to sign, subject to ratification by the Congress, in the Fall of 1987.

In February 1986, the meeting of the General Agreement on Tariffs and Trade (GATT) Tariff Concessions Committee in Geneva resulted in the firm political commitments of the U.S., Canada, Japan, the European Community, the Nordic countries and Switzerland, to a January 1, 1988, date for entry into force of the International Convention on the HS.

**Purpose of Harmonized System**

The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade statistics, and eventually for freight and transport documentation. Its use is expected to increase uniformity and predictability of trade data, and promote standardization of trade and transport documentation. Implementation of the HS will have an impact not only upon all areas of trade, i.e., imports, exports, transportation of goods, and trade statistics, but upon all aspects of customs operations, including classification and appraisal of merchandise, selection for and examination of merchandise data entry into the Automated Commercial System (ACS), and the pre-release and release of goods. Brokers and importers will experience significant changes to their entry procedures.

**Tariff Classification Rulings**

In order to provide the public as much notice as possible of the change to the HS and to provide examples of the nomenclature and numerical coding employed under the HS, for several months the U.S. Customs Service (Customs) has been providing advisory classifications under the proposed U.S. version HS in certain of the ruling letters it has issued setting forth binding tariff classifications under the TSUS. The HS classifications provided in these letters have been accompanied by a caveat stressing that they constitute information of an advisory, nonbinding character and are not challengeable at the present time.

Beginning immediately, the tariff classification rulings issued to the public by Customs upon request under the provisions of Part 177, Customs Regulations (19 CFR Part 177), will contain binding classifications under both the current TSUS and the HS. Rulings setting forth the applicable provisions under both tariff codes will continue to be issued until the HS becomes effective, when rulings under the TSUS will be discontinued.

Rulings issued under the HS can be applied only with respect to merchandise entered, or withdrawn from warehouse, on or after the effective date of the HS, which will be formally announced in a later notice. Until that time, all entries or withdrawals of merchandise will be governed by the TSUS.

Customs will continue to make printed packages of these rulings available to the public as announced in the notice published in the *Federal Register* on August 4, 1987 (52 FR 28928).

**R. Rosettie,**

*Acting Assistant Commissioner, Office of Commercial Operations.*

Dated: August 19, 1987.

[FR Doc. 87-19473 Filed 8-24-87; 8:45 am]

BILLING CODE 4820-02-M

# Sunshine Act Meetings

Federal Register

Vol. 52, No. 164

Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 11:00 a.m., Monday, August 31, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 21, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19567 Filed 8-21-87; 3:31 pm]

BILLING CODE 6210-01-M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council).

**ACTION:** Notice of closed meeting.

**DATE:** August 25-26, 1987.

**PLACE:** Yachats, Oregon.

**SUMMARY:** The Northwest Power Planning Council will hold a closed meeting on January 27-28, 1987, to discuss internal personnel matters.

### FOR FURTHER INFORMATION CONTACT:

Ms. Bess Atkins, (503) 222-5161.

Bobbe Fendall,

Federal Register Liaison.

[FR Doc. 87-19521 Filed 8-21-87; 12:52 pm]

BILLING CODE 0000-00-M

## POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its

bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 31, 1987, in Washington, DC, and at 8:30 a.m. on Tuesday, September 1, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the August 31 meeting is closed to the public. The September 1 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

The Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for August 31, 1987, to consider a contract for systems engineering and technical assistance support. (52 FR 29750, August 11, 1987.)

### Agenda

#### Monday Session

August 31, 1987—1:00 p.m. (Closed)

1. Consideration of contract for Systems Engineering and Technical Assistance Support.

#### Tuesday session

September 1, 1987—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 3-4, 1987.
2. Remarks of the Postmaster General.
3. Postal Rate Commission FY 88 Budget Request.
4. Status of CSRS/FERS Retirement Programs.
5. Tentative FY 89 Appropriations Request.
6. Briefing on Origin-Destination-Information-System (ODIS).
7. Briefing on Capital Investment Review Process.
8. Report on Management Information and Research Technology Group Programs.
9. Capital Investments:
  - a. Lehigh Valley, PA, GMF & VMF.
  - b. Athens, GA, GMF & VMF.
  - c. Retail Vending.
  - d. Intermediate Delivery Vans.
10. Tentative Agenda for October 5-6, 1987, Meeting in New York City.

David F. Harris,

Secretary.

[FR Doc. 87-19510 Filed 8-21-87; 11:11 am]

BILLING CODE 7710-12-M

# Corrections

Federal Register

Vol. 52, No. 164

Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51680; FRL-3221-6]

### Certain Chemicals Premanufacture Notices

#### Correction

In notice document 87-14230 beginning on page 23596 in the issue of Tuesday, June 23, 1987, make the following corrections:

1. On page 23597, in the third column, under P 87-1226, *Toxicity Data*, the second and third lines should read: "kg; Irritation: Skin—Mild, Eye—Irritant."

2. On page 23598, in the third column, under P 87-1248, *Chemical*, in the third line "aromatic" should read "and heterocyclic".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[PF-483; FRL-3219-3]

### Pesticide Tolerance Petitions

#### Correction

In notice document 87-13860 beginning on page 23077 in the issue of Wednesday, June 17, 1987, make the following correction:

On page 23078, in the first column, in paragraph 2., the eighth line should read: "(dimethyl N, N' (thiobis[(methyylimino)]".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-940-87-4220-10; A-22695]

### Proposed Withdrawal and Reservation of Lands; Opportunity for Public Meeting; Arizona

#### Correction

In notice document 87-14473 beginning on page 23898 in the issue of Thursday, June 25, 1987, make the following land description corrections:

1. On page 23898, in the third column—

Under "T. 10 N., R. 10E.," in Sec. 5, in the first line, "NE 1/2" should read "N 1/2".

2. Under "T. 10 N., R. 10E.," in Sec. 6, in the second line, "MW" should read "NW".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-940-07-4212-12; A-22448]

### Realty Action; Arizona

#### Correction

In notice document 87-17037 beginning on page 28198 in the issue of Tuesday, July 28, 1987, make the following correction in the land description on page 28198:

In the third column, under "T. 15 N., R. 13 W.," in Sec. 16, "all" should read "S 1/2 N 1/2".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-940-07-4212-14; A-20295 thru A-20300]

### Sale of Public Land; Arizona

#### Correction

In notice document 87-11634 appearing on page 19208 in the issue of Thursday, May 21, 1987, make the following correction in the land description:

In the third column, under, "T. 19 N., R. 20 W.," under "Sec. 23.," in the third line, "Lot 1" should read "Lot 11".

BILLING CODE 1505-01-D

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

### 22 CFR Parts 41 and 42

[SD-210]

### Visas; Documentation of Immigrants and Nonimmigrants, Under the Immigration and Nationality Act, as Amended

#### Correction

In proposed rule document 87-17947 beginning on page 29542 in the issue of Monday, August 10, 1987, make the following corrections:

1. On page 29543, in the third column, in the third complete paragraph, in the second line, remove "of".

§ 41.12 [Corrected]

2. On page 29544, in § 41.12, in the table, under the heading "Class", in the fourth entry, "of of aliens" should read "or of aliens".

Note: For a State Department correction to this document, see the Proposed Rules Section of this issue.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[HSQ-148-GNC]

### Medicare Program; Selected Performance Information on Hospitals Providing Care to Medicare Beneficiaries

#### Correction

In notice document 87-18813 beginning on page 30741 in the issue of Monday, August 17, 1987, make the following correction:

On page 30744, the six formulas that appeared on that page are corrected to read as follows:

BILLING CODE 1505-01-D

$$\ln \left( \frac{p}{1-p} \right) = b'x + e$$

$$\Sigma \left\{ d \log p + (1-d) \log (1-p) \right\},$$

$$\ln \left( \frac{p_i}{1-p_i} \right) = b_i'x$$

$$D_j = \Sigma \Sigma \frac{\exp(b_i'x_{ij})}{1 + \exp(b_i'x_{ij})}$$

$$\text{var}(D_j) = \Sigma \left\{ \Sigma \Sigma p_{ijk} (1-p_{ijk}) p_{ijk}' (1-p_{ijk}') x_{ijk} C(b_i) x_{ijk}' \right\}$$

$$\text{var}(d_j) = \Sigma n_{ij} \sigma_{ij} (1 - \sigma_{ij})$$

# Environmental Protection Agency

Tuesday  
August 25, 1987

## Part II

## Environmental Protection Agency

40 CFR Part 13

Claims Collections Standards; Proposed  
Rule

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 13

[FRL-3214-9]

### Claims Collections Standards

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The U. S. Environmental Protection Agency (EPA) proposes to revise its regulation at 40 Code of Federal Regulations, Chapter I by adding a new Part 13. This revision is necessary to implement the Debt Collection Act of 1982 (Pub. L. 97-365), the Federal guidelines for Agency debt collection issued by the Department of Justice and the General Accounting Office (4 CFR Part 101 *et seq.*) and the guidelines of the Office of Personnel Management (5 CFR Part 550 *et seq.*) on offsets against employee salaries.

This regulation will enhance EPA's ability to collect its debts and reduce delinquencies by providing guidance to its officers and employees on the procedures authorized by the Debt Collection Act of 1982.

**DATE:** Comments must be received by September 24, 1987.

**ADDRESS:** Environmental Protection Agency, Office of General Counsel, (LE-132G), 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Ray E. Spears, (202-382-4548) or Thressa M. Pearson, (202-475-8887).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Debt Collection Act of 1982 (the Act) amended the Federal Claims Collection Act of 1966, 31 U.S.C. 3711 *et seq.*, the employee offset authority, 5 U.S.C. 5514, the Privacy Act, 5 U.S.C. 552a, and other related statutes.

The following actions have been taken to assist Federal agencies in their implementation of the Act: (1) The General Accounting Office and the Department of Justice issued regulations (49 FR 8889, March 9, 1984) amending the Federal Claims Collection Standards, 4 CFR Parts 101 through 105; (2) the Office of Personnel Management issued regulations (49 FR 27470, July 3, 1984) providing guidance to agencies on the collection of employee debts by offset from pay under 5 U.S.C. 5514; and (3) the Office of Management and Budget issued guidelines (48 FR 15556, April 11, 1983) instructing agencies on changes made to the Privacy Act of 1974.

This regulation is consistent with these standards, guidelines and the common law, and it supplements existing standards under other statutes and regulations.

Section 11 of the Act addresses the question of interest and penalty charges to State and local governments. This section requires agencies to charge interest and administrative costs associated with handling delinquent debts and late penalty charges on outstanding debts on claims owed by "persons." This section also permits waiver of these charges, provided it is done pursuant to government-wide standards and agency regulations. The Act defines "person" to exclude agencies of the United States and State and local governments. EPA, therefore, will not assess nor collect administrative costs and penalty charges associated with its handling of delinquent debts from State and local governments. Additionally, Indian tribes and components of tribal governments are considered local governments for purposes of section 11 of the Act and are not subject to administrative costs and penalty charges. However, EPA will continue to assess and collect interest on delinquent debts owed by State and local governments and by Indian tribes and components of tribal governments pursuant to its common law authority.

#### Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy or a large number of individuals or businesses. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

#### List of Subjects in 40 CFR Part 13

Claims collections.

Dated: August 14, 1987.

Lee M. Thomas,  
Administrator.

For the reasons set forth in the preamble, EPA proposes to revise 40 CFR Chapter I by adding a new Part 13 to read as follows:

### PART 13—CLAIMS COLLECTION STANDARDS

#### Subpart A—General

- Sec.
- 13.1 Purpose and scope.
  - 13.2 Definitions.
  - 13.3 Interagency claims.

Sec.

- 13.4 Other remedies.
- 13.5 Claims involving criminal activities or misconduct.
- 13.6 Subdivision of claims not authorized.
- 13.7 Omission not a defense.

#### Subpart B—Collection

- 13.8 Collection rule.
- 13.9 Initial notice.
- 13.10 Aggressive collection actions; documentation.
- 13.11 Interest, penalty and administrative costs.
- 13.12 Interest and charges pending waiver or review.
- 13.13 Contracting for collection services.
- 13.14 Use of credit reporting agencies.
- 13.15 Taxpayer information.
- 13.16 Liquidation of collateral.
- 13.17 Suspension or revocation of license or eligibility.
- 13.18 Installment payments.
- 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

#### Subpart C—Administrative Offset

- 13.20 Administrative offset of general debts.
- 13.21 Employee salary offset—general.
- 13.22 Salary offset when EPA is the creditor agency.
- 13.23 Salary offset when EPA is not the creditor agency.

#### Subpart D—Compromise of Debts

- 13.24 General.
- 13.25 Standards for compromise.
- 13.26 Payment of compromised claims.
- 13.27 Joint and several liability.
- 13.28 Execution of releases.

#### Subpart E—Suspension of Collection Action

- 13.29 Suspension—general.
- 13.30 Standards for suspension.

#### Subpart F—Termination of Debts

- 13.31 Termination—general.
- 13.32 Standards for termination.

#### Subpart G—Referrals

- 13.33 Referrals to the Department of Justice.

Authority: 31 U.S.C. 3711 *et seq.*, and 5 U.S.C. 552a, 5512, and 5514.

#### Subpart A—General

##### § 13.1 Purpose and scope.

This regulation prescribes standards and procedures for the Environmental Protection Agency's (EPA's) collection and disposal of debts. These standards and procedures are applicable to all debts for which a statute, regulation or contract does not prescribe different standards or procedures. This regulation covers EPA's collection, compromise, suspension, termination and referral of debts.

##### § 13.2 Definitions.

(a) "Debt" means an amount owed to the United States from sources which

include loans insured or guaranteed by the United States and all other amounts due the United States from fees, grants, contracts, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources. As used in this regulation, the terms "debt" and "claim" are synonymous.

(b) "Delinquent debt" means any debt which has not been paid by the date specified by the Government for payment or which has not been satisfied in accordance with a repayment agreement.

(c) "Debtor" means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(d) "Agency" means the United States Environmental Protection Agency.

(e) "Administrator" means the Administrator of EPA or an EPA employee or official designated to act on the Administrator's behalf.

(f) "Administrative offset" means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(g) "Creditor agency" means the Federal agency to which the debt is owed.

(h) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(i) "Employee" means a current employee of the Federal Government including a current member of the Armed Forces.

(j) "Person" means an individual, firm, partnership, corporation, association and includes State and local governments and Indian tribes and components of tribal governments except for purposes of administrative offsets under Subpart C and interest, penalty and administrative costs under Subpart B of this regulation.

(k) "Employee salary offset" means the administrative collection of a debt by deductions at one or more officially established pay intervals from the

current pay account of an employee without the employee's consent.

(l) "Waiver" means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

### § 13.3 Interagency claims.

This regulation does not apply to debts owed EPA by other Federal agencies. Such debts will be resolved by negotiation between the agencies or by referral to the General Accounting Office (GAO).

### § 13.4 Other remedies.

(a) This regulation does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, e.g., resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this regulation for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

### § 13.5 Claims involving criminal activities or misconduct.

(a) The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General. That office has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the Administrator for further actions. Examples of activities which should be referred are matters involving fraud, anti-trust violations, embezzlement, theft, false claims or misuse of Government money or property.

(b) The Administrator will not administratively compromise, terminate, suspend or otherwise dispose of debts involving criminal activity or misconduct without the approval of DOJ.

### § 13.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the \$20,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability

arising from a particular transaction or contract is a single claim.

### § 13.7 Omission not a defense.

Failure by the Administrator to comply with any provision of this regulation is not available to a debtor as a defense against payment of a debt.

## Subpart B—Collection

### § 13.8 Collection rule.

(a) The Administrator takes actions to collect all debts owed the United States and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The Administrator may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (e.g., to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The Administrator maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor), and its final disposition. Information from a debt file relating to an individual may be disclosed only for purposes which are consistent with this regulation, the Privacy Act of 1974 and other applicable law.

### § 13.9 Initial notice.

(a) When the Administrator determines that a debt is owed EPA, he provides a written initial notice to the debtor. Unless otherwise provided by agreement, contract or order, the initial notice informs the debtor:

(1) Of the amount, nature and basis of the debt;

(2) That payment is due immediately upon receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date mailed or hand-delivered;

(4) That interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs may be assessed against a delinquent debt;

(5) Of any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived

(citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt), and of the possibility of assessment of interest, penalty and administrative costs; and

(6) The address, telephone number and name of the person available to discuss the debt.

(b) EPA will respond promptly to communications from the debtor. Response generally will be within 20 days of receipt of communication from the debtor.

(c) Subsequent demand letters also will advise the debtor of any interest, penalty or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 13.14), a collection agency (see § 13.13) or to DOJ (see § 13.33) if it is not paid.

#### **§ 13.10 Aggressive collection actions; documentation.**

(a) EPA takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of EPA's activities. EPA cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented, in the claim file and the bases for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required by § 13.33, is retained in the appropriate debt file.

#### **§ 13.11 Interest, penalty and administrative costs.**

(a) *Interest.* EPA will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the date of the initial notice to the debtor. EPA will not recover interest where the debt is paid within 30 days of the date of the notice. EPA will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the *Federal Register* and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interest of the Government. EPA will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The Administrator may extend the 30-day period for payment where he

determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(3) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments. These costs include both direct and indirect costs. Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by § 13.12.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owed by State and local governments, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waiver.* The Administrator may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(1) Waiver is justified under the criteria of § 13.25;

(i) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(ii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(2) A decision to waive interest, penalty charges or administrative costs may be made at any time prior to payment of a debt. However, where

these charges have been collected prior to the waiver decision, they will not be refunded. The Administrator's decision to waive or not waive collection of these charges is a final agency action.

#### **§ 13.12 Interest and charges pending waiver or review.**

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; *except*, that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

#### **§ 13.13 Contracting for collection services.**

EPA will use private collection services where it determines that their use is in the best interest of the Government. Where EPA determines that there is a need to contract for collection services it will—

(a) Retain sole authority to resolve any dispute by the debtor of the validity of the debt, to compromise the debt, to suspend or terminate collection action, to refer the debt to DOJ for litigation, and to take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (*e.g.*, the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Internal Revenue Service;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to EPA, upon request, all data and reports contained in its files relating to its collection actions on a debt.

#### **§ 13.14 Use of credit reporting agencies.**

EPA reports delinquent debts to appropriate credit reporting agencies.

(a) EPA provides the following information to the reporting agencies:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information, EPA will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested, that:

(i) The designated EPA official has reviewed the claim and has determined that it is valid and overdue;

(ii) That within 60 days EPA intends to disclose to a credit reporting agency the information authorized for disclosure by this subsection; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in EPA's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting agency, EPA will provide a written statement to the reporting agency that all required actions have been taken. Additionally, EPA will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amounts of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate EPA official. The credit reporting agency will exclude the debt from its reports until EPA certifies in writing that the debt is valid.

#### § 13.15 Taxpayer information.

(a) The Administrator may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to credit reporting agencies only for the purpose of their use in preparing a commercial credit report on the taxpayer for use by EPA.

#### § 13.16 Liquidation of collateral.

Where the Administrator holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. EPA will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from

other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The Administrator will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

#### § 13.17 Suspension or revocation of license or eligibility.

When collecting statutory penalties, forfeitures, or debts for purposes of enforcement or compelling compliance, the Administrator may suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Administrator may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with EPA or engaging in programs EPA sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The Administrator will report the failure of any surety to honor its obligations to the Treasury Department for action under 6 U.S.C. 11.

#### § 13.18 Installment payments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment. However, where the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the Administrator agrees to accept payment by installments, the Administrator may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the Administrator

determines that a longer period is required. Installment payments of less than \$50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify. If the debt is unsecured, the Administrator may require the debtor to execute a confession-judgment note with a tax carry-forward and a tax carry-back provision. Where the Administrator secures a confession-judgment note, the Administrator will provide the debtor a written explanation of the consequences of the debtor's signing the note.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the Administrator determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the Administrator will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

#### § 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

(a) The Administrator may periodically compare EPA's costs in handling debts with the amounts it collects.

(b) The Administrator may periodically consider the need, feasibility, and cost effectiveness of automated debt collection operations.

(c) The Administrator may establish internal controls to identify the causes of overpayments and delinquencies and may issue procedures to prevent future occurrences of the identified problems.

### Subpart C—Administrative Offset

#### § 13.20 Administrative offset of general debts.

This subpart provides for EPA's collection of debts by administrative offset under section 5 of the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authorities and the common law. It does not apply to offsets against employee salaries covered by §§ 13.21, 13.22 and 13.23 of this subpart. EPA will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract. EPA will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The Administrator collects debts by administrative offset if—

- (i) The debt is certain in amount;
- (ii) Efforts to obtain direct payment from the debtor have been, or would most likely be, unsuccessful or the Administrator and the debtor agree to the offset;
- (iii) Offset is not expressly or implicitly prohibited by statute, regulation or contract;
- (iv) Offset is cost-effective or has significant deterrent value;
- (v) Offset does not substantially impair or defeat program objectives; and
- (vi) Offset is best suited to further and protect the Government's interest.

(2) The Administrator may, in determining the method and amount of the offset, consider the financial impact on the debtor.

(b) *Interagency offset.* The Administrator may offset a debt owed to another Federal agency from amounts due or payable by EPA to the debtor, or may request another Federal agency to offset a debt owed to EPA. The Administrator may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due a debtor where reasonable attempts to obtain payment have failed. Interagency offsets from employee salaries will be made in accordance with the procedures contained in §§ 13.22 and 13.23.

(c) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the Administrator on a case-by-case basis.

(d) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate EPA official determines that a debt exists (e.g., contracting officer, grant award official etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a repayment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when EPA requests offset from money held by another agency.

(e) *Pre-offset notice.* Before initiating offset, the Administrator sends the debtor written notice of:

(1) The basis for and the amount of the debt as well as the Agency's intention to collect the debt by offset if payment or satisfactory response has not been received within 30 days of the notice;

(2) The debtor's right to submit an alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request review of the determination of indebtedness or to apply for waiver under any available statute or regulation; and

(3) Applicable interest, penalty charges and administrative costs.

(f) *Alternative repayment.* The Administrator may, at the Administrator's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the Administrator may consider such factors as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The Administrator may require financial documentation from the debtor before considering the repayment arrangement.

(g) *Review of administrative determination.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the Administrator. The Administrator may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The Administrator may administratively offset a debt prior to the completion of a formal or informal review where he determines that:

- (i) Failure to take the offset would substantially prejudice EPA's ability to collect the debt; and
- (ii) The time before the first offset is to be made does not reasonably permit the completion of the review procedures. (Offsets taken prior to completion of the review process will be followed promptly by the completion of the process. Amounts recovered by offset but later found not to be owed will be refunded promptly.)

(3) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days

after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(4) The Administrator may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(5) The Administrator will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

#### § 13.21 Employee salary offset—general.

(a) *Purpose.* This section establishes EPA's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed EPA and debts owed to other Federal agencies by EPA employees. This section does not apply to debts owed EPA arising from travel advances under 5 U.S.C. 5705, employee training expenses under 5 U.S.C. 4108 and to other debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to EPA's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR Part 550, Subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 4 CFR Parts 101 through 105, the Federal Claims Collection Standards.

#### § 13.22 Salary offset when EPA is the creditor agency.

(a) *Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, EPA will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as

described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States which will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements which are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to entitlement to notice, hearing, written response and final decision.* The procedural requirements of paragraph (a) of this section are not applicable to any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by certified mail (return receipt requested), and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate EPA official and will be included in the employee's personnel file and documented in the EPA payroll system);

(7) The right to a hearing conducted by a hearing official not under the control of the Administrator, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. Chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority;

(12) Any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(13) That amounts paid or deducted for the debt, except administrative costs and penalty charges where the entire debt is not waived or terminated, which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written request directly with the Chief, Fiscal Policies and Procedures Branch (PM-226), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The request must state the bases upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by EPA within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses which support his/her position to the Chief,

Fiscal Policies and Procedures Branch, within 15 days of the date of the request for a hearing. The Chief, Fiscal Policies and Procedures Branch, will arrange for the services of a hearing official not under the control of the Administrator and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under these procedures.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already

provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump-sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the Administrator and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than \$25 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump-sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, EPA will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 13.20.

(n) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency prior to repaying a debt owed to EPA, the following action will be taken:

(1) The appropriate debt-claim form specified by the Office of Personnel Management (OPM) will be completed and certified to the new paying office by EPA. EPA will certify: That the employee owes a debt; the amount and the basis for the debt; the date on which payment is due; the date the Government's rights to collect the debt first accrued; and that EPA's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) The new paying agency will be advised of the amount which has already been collected, the number of installments and the commencement date for the first installment, if other than the next officially established pay period. EPA will also identify to the new paying agency the actions it has taken and the dates of such actions.

(3) EPA will place or will arrange to have placed in the employee's official personnel file the information required by paragraphs (n) (1) and (2) of this section.

(4) Upon receipt of the official personnel file from EPA, the new paying agency will resume collection from the employee's current pay account and will notify both the employee and EPA of the resumption.

(o) *Interest, penalty and administrative cost.* EPA will assess interest and administrative costs on debts collected under these procedures. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) A processing and handling charge will be assessed on debts collected through salary offset under this section. Where offset is begun prior to the employee's receipt of the 30-day written notice of the proposed offset, processing and handling costs will only be assessed after the expiration of the 30-day notice period and after the completion of any hearing requested under paragraph (d) of this section or waiver consideration under paragraph (g) of this section.

(2) Interest will be assessed on all debts not collected within 30 days of the date of the expiration of the time for the employee to request a hearing, completion of a hearing pursuant to paragraph (d) of this section, or waiver consideration under paragraph (g) of this section, whichever is later. Interest will continue to accrue during the period of the recovery.

(3) Deductions by salary offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 120 days from the date of notice to the debtor and penalty assessments have not been suspended because of waiver consideration by EPA.

(p) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights which the employee may have under either these procedures or any other provision of law.

(q) *Refunds.* EPA will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(r) *Time limit for commencing recovery by salary setoff.* EPA will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

#### § 13.23 Salary offset when EPA is not the creditor agency.

The requirements below apply when EPA has been requested to collect a debt owed by an EPA employee to another Federal agency.

(a) *Format for the request for recovery.* (1) The creditor agency must complete fully the appropriate claim form specified by OPM.

(2) The creditor agency must certify to EPA on the debt claim form: The fact that the employee owes a debt; the amount and the basis of the right to collect the debt; the date that the debt first accrued; and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM and send it to the Chief, Fiscal Policies and Procedures Branch (PM-226), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(3) If the collection is to be made in installments, the creditor agency must also advise EPA of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(4) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this information is attached to the claim form, the creditor agency must indicate the actions it took under its procedures for salary offset and the dates of such actions.

(b) *Processing of the claim by EPA—*  
(1) *Incomplete claims.* If EPA receives an improperly completed claim form, the claim form and all accompanying material will be returned to the requesting (creditor) agency with notice that OPM procedures must be followed and a properly completed claim form must be received before any salary offset can be taken. The notice should identify specifically what is needed, from the requesting agency for the claim to be processed.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. EPA will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. EPA will not assess a handling or any other related charge to cover the cost of its processing the claim.

(c) *Employees separating from EPA before a debt to another agency is collected—*(1) *Employees separating from Government service.* If an employee begins separation action before EPA collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from EPA in accordance with § 13.22(l);

(ii) If the total amount of the debt cannot be recovered, EPA will certify to the creditor agency and the employee the total amount of EPA's collection; and

(iii) If EPA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it will forward a copy of the claim form to the agency responsible for making such payments as notice that a debt is outstanding. EPA will also send a copy of the claim form to the creditor agency

so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency before EPA collects the total amount due the creditor agency, the following actions will be taken:

(i) EPA will certify the total amount of the collection made on the debt; and

(ii) The employee's official personnel folder will be sent to the new paying agency. (It is the responsibility of the creditor agency to ensure that the collection is resumed by the new paying agency.)

#### Subpart D—Compromise of Debts

##### § 13.24 General.

EPA may compromise claims for money or property where the claim, exclusive of interest, penalty and administrative costs, does not exceed \$20,000. Where the claim exceeds \$20,000, the authority to accept the compromise rests solely with DOJ. The Administrator may reject an offer of compromise in any amount. Where the claim exceeds \$20,000 and EPA recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for EPA's recommendation. EPA refers compromise offers for claims in excess of \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures. EPA refers offers of compromise for claims of \$20,000 to \$100,000 to the United States Attorney in whose judicial district the debtor can be found. If the Administrator has a debtor's firm written offer for compromise which is substantial in amount but the Administrator is uncertain as to whether the offer should be accepted, he may refer the offer and the supporting data to DOJ or GAO for action.

##### § 13.25 Standards for compromise.

(a) EPA may compromise a claim pursuant to this section if EPA cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the

Administrator may consider, among other factors, the following:

(1) *Individual debtors.* (i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor;

(v) The availability of assets or income which may be realized by enforced collection proceedings; or

(vi) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(2) *Municipal and quasi-municipal debtors.* (i) The size of the municipality or quasi-municipal entity;

(ii) The availability of current and future resources sufficient to pay the debt (e.g., bonding authority, rate adjustment authority, or taxing authority); or

(iii) The ratio of liabilities (both short and long term) to assets.

(3) *Commercial debtors.* (i) Ratio of assets to liabilities;

(ii) Prospects of future income or losses; or

(iii) The availability of assets or income which may be realized by enforced collection proceedings.

(b) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is substantial doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, EPA will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In

determining whether the cost of collection justifies enforced collection of the full amount, EPA may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the Administrator determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

#### § 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confession-judgment agreement which accelerates payment of the balance due upon default.

#### § 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

#### § 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

### Subpart E—Suspension of Collection Action

#### § 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed \$20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension.

Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding \$20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of \$20,000 to \$100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

#### § 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator may suspend collection activities on debts of \$20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

### Subpart F—Termination of Debts

#### § 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$20,000. If the debt exceeds \$20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of \$20,000 but \$100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

#### § 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

#### Subpart G—Referrals

##### § 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have

been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

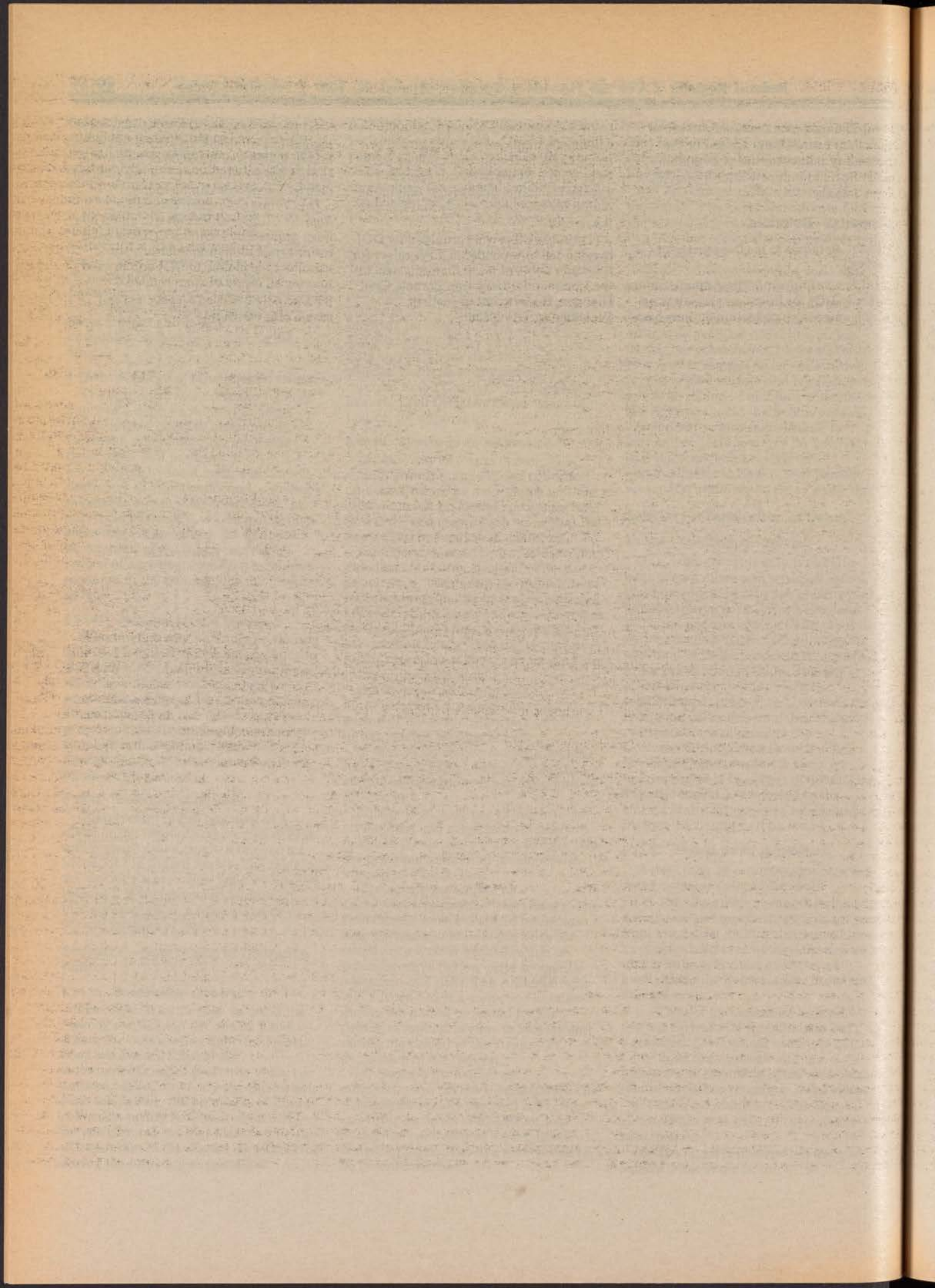
(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than \$100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of \$100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

[FR Doc. 87-19186 Filed 8-24-87; 8:45 am]

BILLING CODE 6560-50-M



# Federal Register

Tuesday  
August 25, 1987

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## Part III

### Department of Health and Human Services

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#### Food and Drug Administration

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#### 21 CFR Part 874

#### Ear, Nose, and Throat Devices; Exemptions From Premarket Notification; Final Rule

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 874

[Docket No. 86N-0010]

## Ear, Nose, and Throat Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, certain ear, nose, and throat devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

**EFFECTIVE DATE:** September 24, 1987.

**FOR FURTHER INFORMATION CONTACT:**

David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8185.

**SUPPLEMENTARY INFORMATION:** The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commercial distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E.

Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices and free agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On November 6, 1986 (51 FR 40394), FDA proposed to exempt from premarket notification requirements four ear, nose, and throat devices. Interested persons were given until January 5, 1987, to comment. No comments were received. Therefore, FDA is adopting the regulation as proposed.

**Criteria for 510(k) Exemptions**

FDA is exempting generic types of class I devices from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm, or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determination above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device

performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

**Reference**

The following information has been placed in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase 11," Public Health Service, Department of Health and Human Services, May 1987, p. 9.

#### Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 874 is amended as follows:

#### PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR Part 874 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 874 is amended by adding new § 874.9 to read as follows:

#### § 874.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 874.1100 by revising paragraph (b) to read as follows:

#### § 874.1100 Earphone cushion for audiometric testing.

\* \* \* \* \*

(b) *Classification.* Class I. If the device is made of the same materials

that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 874.3540 by revising paragraph (b) to read as follows:

#### § 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

\* \* \* \* \*

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 874.4420 by revising paragraph (b) to read as follows:

#### § 874.4420 Ear, nose, and throat manual surgical instrument.

\* \* \* \* \*

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 874.5800 by revising paragraph (b) to read as follows:

#### § 874.5800 External nasal splint.

\* \* \* \* \*

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: July 1, 1987.

John M. Taylor,  
Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-19396 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-01-M



# Statistical Report

Tuesday  
August 25, 1987

## Part IV

### Office of Management and Budget

Review of the "Dress Rehearsal" for the  
1990 Census of Population and Housing;  
Notice

# OFFICE OF MANAGEMENT AND BUDGET

## Review of the "Dress Rehearsal" for the 1990 Census of Population and Housing

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice containing information on the status of the review under the Paperwork Reduction Act of the 1990 Census Dress Rehearsal.

**SUMMARY:** The Office of Management and Budget (OMB) is currently reviewing, under the Paperwork Reduction Act, the "Dress Rehearsal" for the 1990 Census of Population and Housing. Since the review period began on June 17, 1987, OMB has received several hundred letters from members of the public concerning the review and the content of the 1990 Census. Both in response to the large number of people who have submitted comments already and to assist others who may wish to do so before the end of the review period, OMB is publishing the following information about the review process and the current status of the Dress Rehearsal review.

**DATES:** The review period for the 1990 Census Dress Rehearsal will end September 15, 1987. Public comments on the Dress Rehearsal will be welcomed up to that date.

**ADDRESS:** Comments on the 1990 Census Dress Rehearsal should be made in writing and sent to: Donald R. Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Arbuckle or Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget. Telephone number: (202) 395-3740.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is currently reviewing, under the Paperwork Reduction Act of 1980, the "Dress Rehearsal" for the 1990 Census of Population and Housing, a prototype of the questionnaires and design to be used in the 1990 Census. In recent weeks, OMB has received several hundred letters concerning the census. All the letters have been read and will become part of the public record of the Dress Rehearsal review.

Under the Paperwork Reduction Act of 1980, all collections of information from 10 or more people must be reviewed by OMB to assure that the information to be collected and published will be as useful as possible

to the government and the public and that the burden of respondents is held to the minimum practical level. OMB is also responsible under the Paperwork Reduction Act for overseeing and establishing standards for Federal statistical programs, to maintain and improve the quality of government statistics. OMB's information collection reviews for statistical surveys such as the decennial census focus not only on burden but also on quality issues.

OMB may take up to 90 days for its reviews, and during the review period the public is invited to comment on any aspect of the information collection under review. In the case of the Dress Rehearsal for the 1990 Census, the OMB review period began on June 17th and will end on September 15th. OMB will welcome public comments until the end of the review period. *OMB has as yet made no decisions or recommendations concerning the Dress Rehearsal, nor will any final decisions be made until mid-September.*

In reviewing all proposed information collections, OMB is responsible for assuring that the agency sponsoring the collection has provided adequate demonstration that the data to be collected have substantial, practical uses and that no more burden than necessary is placed on those who must provide the data, be they individuals, businesses, or State and local governments. For statistical data collections, OMB is further responsible for assuring that the data collected and published are sufficiently reliable to meet the major requirements of government and public users. To fulfill these responsibilities, OMB frequently must ask sponsor agencies—such as the Bureau of the Census, in the case of the 1990 Census Dress Rehearsal—for additional justification of their data collection plans. In the role of reviewer, it is OMB's responsibility to ask questions and make sure that there are adequate answers for the public record.

### Some Questions OMB is Raising in its Review of the 1990 Census Dress Rehearsal

The 1990 Census Dress Rehearsal, which OMB is currently reviewing, is a prototype of the forms and design to be used in the 1990 Census. The Bureau of the Census is proposing to administer a "short form" questionnaire containing 17 questions to every household in the country (about 96 million households) and to ask an additional 44 questions, on a "long form," of a nationwide sample of 1 in 6 (about 16 million) households.

Having reviewed the materials submitted by the Bureau of the Census

to justify the proposal, OMB has raised a number of questions about the content and design, to determine that the data to be collected in the census will be reliable and of the greatest possible use and that respondent burden has been reduced to the minimum level practicable and appropriate. OMB would particularly welcome public comments directed to these questions.

#### 1. Are there substantial uses for all the data to be collected?

There are some items on the questionnaire for which OMB has asked for more information concerning substantial use. For example,

- Question H20—How many bedrooms do you have?

The justification states that this information, to be collected on the long form, "provides an important assessment of the amount of available living and sleeping space" and that it is used in calculations of "fair market rentals." However, question H3 asks total number of rooms. OMB is inquiring whether both items are needed in the census.

- Question H7—Do you have a telephone in this house or apartment? (if yes,) enter phone number.

This question is being proposed for the short form. OMB has questioned the need to ask every household whether it has a telephone, but has particularly questioned the need for, and propriety of, requiring people, under penalty of law, to give their home telephone number. If the Bureau of the Census wishes to use telephone numbers for follow-up, could respondents be asked to provide that information on the back of the forms (where they are asked to give the name and address of the person who filled out the form)?

#### 2. Is the decennial census the best source of certain data?

In certain cases, OMB has asked for a stronger demonstration that the decennial census is an appropriate vehicle for collecting reliable, analytically-useful information. For example,

- The long form proposed for the census contains seven questions concerning energy use and costs:

H15—Which fuel is used most for heating this house or apartment?

H16—What kind of heating equipment is used most to heat this house or apartment?

H17—What fuel is used most for heating the water in this house or apartment?

H18a-d—What are the yearly costs of utilities and fuels for this house or apartment? If you have been here less than 1 year, estimate the yearly cost.

(Four-part question, asked separately for electricity, gas, water, and "oil, coal, kerosene, wood, etc.")

The Energy Information Administration (EIA) has a statistical program dealing with residential energy use and costs. When the EIA program began in the late 1970s, cost questions such as those proposed for the 1990 Census were rejected as unreliable. This judgment was based in part on the experience in an earlier census where such questions produced results that were 25 to 50 percent higher than actual energy costs. This kind of reporting bias cannot be reduced by increasing sample size—the error persists in a complete census or a sample of any size and is so large that it dwarfs the effect of sampling error, even in a sample covering only a fraction of 1 percent of all households.

EIA dealt with this problem by getting the permission of randomly selected households to go directly to their energy suppliers for accurate records of energy use and costs. EIA also found that more specific questions were needed to describe energy consumption—to identify electric heaters used to supplement an oil furnace, for example. Based on its experience, EIA reported that the only 1990 Census question necessary for this use was question H15 ("Which fuel is used most for heating this house or apartment?"), to be used for benchmarking the more complete and accurate sample surveys conducted by EIA to measure energy consumption and costs. In the past, for a modest charge, EIA has augmented its surveys to meet the needs of other agencies for accurate energy information.

• The proposed 1990 Census long form contains two questions on water source and sewage disposal:

H12—Do you get your water from—  
A public system such as a city water department or private company?  
An individual drilled well?  
An individual dug well?  
Some other source such as a spring, creek, river, cistern, etc.?

H13—Is this building connected with a public sewer?

The Census Bureau's supporting statement indicates that the principal uses of this information are in planning various rural development and assistance programs. Inasmuch as the coverage of public water and sewer systems is known from other sources than the census (local government and utility company records, which might be able to serve local planning needs), and the principal use of census data is to determine the circumstances of households that are *not* served by public systems, OMB is asking whether a

survey targeted at rural areas might be a better vehicle for collecting these data.

3. *Is it necessary to ask some of the questions of such large numbers of households (96 million for the short-form questions, 16 million for the long form)?*

In 1975, Congress inserted into Title 13 (the Census Code) a new section (Section 195) specifically authorizing the Census Bureau to use statistical sampling whenever *feasible* in all areas of the census except the actual count of the population. OMB would like to make sure that optimum use is made of sampling, both so that respondent burden is minimized and so that, for any given burden, a greater amount of useful information can be gathered in the census.

• *Short-form housing questions.* The proposed short form includes 10 housing questions. In 1986, GAO studied the uses of these 100-percent data, questioned the need for collecting them from all households (rather than a sample), and recommended that the Census Bureau test a short form that included only four housing questions.

OMB too is questioning the need for asking the following housing questions on the 100-percent (short) form:

H3—How many rooms do you have in this house or apartment?

H4—Do you have complete plumbing facilities in this house or apartment?

H5—Is this house or apartment part of a condominium?

H6—Is this house on ten or more acres? Is there a business or a medical office on this property?

H7—Do you have a telephone in this house or apartment?

H8—Is this house or apartment—  
Owned with a mortgage or loan?  
Owned free and clear?

Rented for cash rent?  
Occupied without payment of cash rent?

H9—(For owners) What is the value of this property; that is, how much do you think this house and lot or condominium unit would sell for if it were for sale?

H10—(For renters) What is the monthly rent? Does the monthly rent include any meals?

In the case of the last two questions (H9 and H10), which are to be answered by checking ranges representing approximate dollar values, a 100-percent count has no advantage in accuracy over a much smaller sample.

• *Sample size for the long form.* OMB is concerned that the proposed 16 million-household sample may be larger than necessary for collecting much of the long-form data.

Some of the questions to be used in the 1990 Census are known to produce

large errors because households cannot accurately estimate, or do not wish to report, the answer. In these cases, the bias dwarfs any error introduced by sampling, even at very modest sample sizes. The error is inherent in the question and is not reduced by asking the question of millions of additional households. Questions calling for estimates of dollar values or specific costs are likely to provide no more accuracy averaged across 16 million households than over a sample of 100,000 or less.

The principal justification given for many of the 1 in 6 sample questions is that data are needed for very small areas for planning purposes. However, there are some cases where similar data are available locally. OMB is questioning whether these data could not adequately serve planning purposes. For example, information on real estate transactions, including the price for which houses have recently sold, is available from locally-available records, as is information on real estate tax assessments (question H23 on the proposed long form).

For some other long-form questions, OMB is asking for more information indicating that data for small areas are actually needed and used. Examples of such questions are:

H24—What was the annual payment for fire, hazard, and flood insurance on this property?

H25a—Do you have a mortgage, deed of trust, contract to purchase, or similar debt on this property?

H25b—How much is your regular monthly mortgage payment on this property?

H25c—Does your regular monthly mortgage payment include payments for real estate taxes on this property?

H25d—Does your regular monthly mortgage payment include payments for fire, hazard, or flood insurance on this property?

H26a—Do you have a second or junior mortgage or a home equity loan on this property?

H26b—How much is your regular monthly payment on all second or junior mortgages and all home equity loans?

H27—(For condominium owners) What is the monthly condominium fee?

H28—(For mobile home owners) What was the total cost for personal property taxes, site rent, registration fees, and license fees on this mobile home and its site last year? Exclude real estate taxes.

4. *Is the response burden of the census fairly distributed?*

The proposed long form with 61 questions (as compared with the short form's 17) imposes a lopsided burden on

those households that receive the long form. OMB has asked the Census Bureau to consider the possibility of dividing the long-form questions into two or more questionnaires, so as to distribute the burden more equitably.

5. *Is the length of the proposed questionnaires, particularly the long form, likely to have any adverse effect on the quality of response?*

OMB's concern about questionnaire length and content relates not just to burden but, even more important, to the

accuracy of the census count and the reliability of the demographic data that are collected in the census. The high rates of "failed edits" in the 1970 and 1980 censuses (the percentage of returned forms that did not meet the Census Bureau's edit criteria and therefore had to be followed up) suggest that in the recent past respondents have experienced substantial problems filling out forms completely and accurately. For example, in 1980 45 percent of the long forms that were mailed back were

so incomplete or otherwise deficient that a follow-up was required. Before approving plans for the 1990 census, OMB would like to be sure that careful attention has been paid to all aspects of data collection that could affect the quality of response.

Authority: 44 U.S.C. 3504.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

[FR Doc. 87-19574 Filed 8-24-87; 8:45 am]

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